United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

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OCT 4 2000

Honorable Apesanahkwat
Chairman
Menominee Indian Tribe of Wisconsin
P.O. Box 910
Keshena, Wisconsin 54135

Dear Chairman Apesanahkwat:

On August 21, 2000, we received the original executed Amendment to the Gaming Compact of 1992 between the Menominee Indian Tribe of Wisconsin (Tribe) and the State of Wisconsin (State) dated August 18, 2000. We have completed our review of this Amended Compact and conclude that it does not violate the Indian Gaming Regulatory Act of 1988 (IGRA), Federal law, or our trust responsibility. Therefore, pursuant to Section 11(d)(8)(A) of IGRA, 25 U.S.C. § 2710(d)(8)(A) and delegated authority in 209 DM 8.1, we approve the Amended Compact. The Amended Compact shall take effect when the notice of our approval, pursuant to Section 11 (d)(3)(B) of IGRA, 25 U.S.C. § 2710(d)(3)(B), is published in the FEDERAL REGISTER.

We wish the Tribe and the State continued success in this economic venture.

Sincerely,

Assistant Secretary - Indian Affairs

Enclosure

Similar Letter Sent to: Honorable Tommy G. Thompson
Governor of Wisconsin
Madison, Wisconsin 53707

cc: Midwest Region w/copy of approved Amendment
National Indian Gaming Commission w/copy of approved Amendment
United States Attorney w/copy of approved Amendment

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Notice of Approved Amended Tribal-State Compact

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Amended Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amended Compact of 1992 between the Menominee Indian Tribe of Wisconsin and the State of Wisconsin, which was executed on August 18, 2000.

DATES: This action is effective October 19, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: October 4, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–26882 Filed 10–18–00; 8:45 am]

BILLING CODE 4310–02–P

MENOMINEE INDIAN TRIBE OF WISCONSIN

and

STATE OF WISCONSIN

GAMING COMPACT OF 1992

MENOMINEE/STATE OF WISCONSIN COMPACT

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MENOMINEE INDIAN TRIBE OF WISCONSIN
and
STATE OF WISCONSIN

This TRIBAL/STATE COMPACT which was made and entered into the 3rd day of June, 1992 by and between the MENOMINEE INDIAN TRIBE OF WISCONSIN, a federally acknowledged Indian Tribe acting through the Honorable Glen T. Miller, Chairman, and the STATE OF WISCONSIN, acting through its Governor, the Honorable Tommy G. Thompson: is hereby amended this 18th day of August, 2000, by the MENOMINEE INDIAN TRIBE OF WISCONSIN, acting through its Honorable Tribal Chairman, the MENOMINEE KENOSHA GAMING AUTHORITY, acting through its Honorable Chairman, and the STATE OF WISCONSIN, acting through its Governor, the Honorable Tommy G. Thompson:

WHEREAS, the Menominee Indian Tribe of Wisconsin is a sovereign government possessed of all sovereign powers and rights thereto pertaining; and

WHEREAS, the Constitution of the Menominee Indian Tribe of Wisconsin authorizes the Menominee Legislature to negotiate contracts on behalf of the Tribe; and

WHEREAS, the Chairman of the Menominee Indian Tribe of Wisconsin is authorized, pursuant to the Tribal Constitution and the Menominee Tribal Legislature's Resolution attached hereto as Exhibit A, to enter into this Compact on behalf of the Tribe; and

WHEREAS, the Chairman of the Board of the Menominee Kenosha Gaming Authority is authorized, pursuant to the charter of the Menominee Kenosha Gaming Authority and the resolution of the Board of Menominee Kenosha Gaming Authority attached hereto as Exhibit B, to enter into this Compact on behalf of the Authority; and

WHEREAS, the State of Wisconsin is a sovereign state of the United States with all the rights and powers thereto pertaining; and

WHEREAS, the Constitution and laws of the State of Wisconsin permit certain Class III gaming activities; and

WHEREAS, the Governor is authorized by s. 14.035, Wis. Stats., to enter into gaming compacts with the several Indian tribal governments within the State of Wisconsin; and

WHEREAS, the Congress of the United States has enacted into law the Indian Gaming Regulatory Act, P.L. 100-497, 25 U.S.C. sec. 2701, et seq., which provides in part that a tribal/state compact may be negotiated between a tribe and a state to set forth the rules, regulations and conditions under which a tribe may conduct Class III gaming, as defined in the Act, on Indian lands within a state permitting Class III gaming; and

WHEREAS, the Menominee Indian Tribe of Wisconsin and the State of Wisconsin have mutually agreed to the terms and conditions under which certain Class III gaming may be conducted on Tribal lands;

WHEREAS, Section XXXI of the Tribal/State Compact entered into on June 3, 1992, between the Menominee Indian Tribe of Wisconsin and the State of Wisconsin authorizes modifications and amendments thereto; and

WHEREAS, the Menominee Indian Tribe of Wisconsin and the State of Wisconsin have mutually agreed that the amendments to the June 3, 1992 Tribal/State Compact for the conduct of Class III gaming under the terms and conditions set forth below will benefit the citizens of the Tribe and protect the members of the Tribe and the citizens of the State of Wisconsin, consistent with the objectives of the Indian Gaming Regulatory Act; and

WHEREAS, the Menominee Indian Tribe of Wisconsin and the State of Wisconsin have mutually agreed to the amended terms and conditions set forth below under which certain Class III gaming may be conducted on Tribal lands.

NOW, THEREFORE, THE MENOMINEE INDIAN TRIBE OF WISCONSIN and THE STATE OF WISCONSIN do enter into this Tribal/State Compact, as amended:

I. TITLE. This document shall be cited as "The Menominee Indian Tribe of Wisconsin/State of Wisconsin Gaming Compact of 1992" (hereinafter, "Compact").

II. DECLARATION OF POLICIES AND PURPOSES. The State and the Tribe agree that this Compact, as amended, is entered for the following purposes and is to be construed and implemented to give effect to these policies:

A. To authorize the operation of certain Class III gaming by the Tribe on Tribal lands in the State of Wisconsin as a means of promoting Tribal economic development, self-sufficiency and strong Tribal government, and for such other purposes as authorized by law;

B. To assure that the Tribe's Class III games under this Compact are operated so as to protect against organized crime and other corrupt influences, and to assure that any Class III gaming is operated fairly and honestly by both the Tribe and the players;

C. To assure effective concurrent Tribal and State regulation of gaming operated under this Compact as provided herein; and

D. To fulfill the purpose and intent of the Indian Gaming Regulatory Act by providing for certain Class III gaming operated by the Tribe as a means of generating Tribal revenues to fund programs that provide vital services to members of the Tribe, including education, health and human resources, and economic development for the benefit of the Tribe.

III. DEFINITIONS.

For purposes of this Compact:

A. "Act" shall mean the Indian Gaming Regulatory Act, P.L. 100-497, 25 U.S.C. sec. 2701, et seq.

B. "Authority" means the Menominee Kenosha Gaming Authority, a tribal business vested with governmental powers by the Tribe, which has been chartered pursuant to Article XIII of the Tribe's Constitution on September 16, 1999, for the purpose of developing, constructing, conducting and managing a gaming business venture of the Tribe in Kenosha, Wisconsin.

C. "Department of Justice" means the Department of Justice of the State of Wisconsin, its authorized officials, agents and representatives.

D. "Department" means the Department of Administration, its authorized officials, agents and representatives or any successor agency delegated the responsibility for the regulation and oversight of Class III gaming as authorized by this Compact.

E. "Management contract" means an agreement covering the overall management and operation of a Tribal game or gaming facility by an entity other than the Tribe or its employees, including all collateral agreements to such agreement that relate to gaming activity. The term does not include agreements for the procurement of particular services, materials or supplies related to the Tribe's operation of Class III gaming under this Compact, such as the supply of gaming aids, communications and other equipment, computers and software and instant scratch tickets.

F. "Person" includes all partnerships (general and limited), associations and corporations.

G. "State" means the State of Wisconsin, its authorized officials, agents and representatives.

H. "Tribal lands" for purposes of this Compact has the following meaning:

1. All lands within the limits of the Menominee Indian Tribe of Wisconsin reservation;

2. All lands within the State of Wisconsin held in trust by the United States for the benefit of the Menominee Indian Tribe of Wisconsin as of October 17, 1988; and

3. All lands within the State of Wisconsin which may be acquired in trust by the United States for the benefit of the Menominee Indian Tribe of Wisconsin after October 17, 1988, over which the Tribe exercises governmental power, and which meet the requirements of sec. 20 of the Act, 25 U.S.C. sec. 2719.

I. "Tribe" means the Menominee Indian Tribe of Wisconsin, its authorized officials, agents and representatives, including the Authority.

J. "Kenosha facility" shall mean all Class III gaming facilities and activities operated by the Tribe at the site located in the City of Kenosha taken into trust for the benefit of the Tribe pursuant to Section 20 of the Act.

K. In computing any period of time prescribed or allowed by this Compact, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday under State or federal law, in which case the last day shall be the next business day.

IV. AUTHORIZED CLASS III GAMING.

A. The Tribe shall have the right to operate the following Class III games during the term of this Compact but only as provided in this Compact:

1. Electronic games of chance with video facsimile displays;

2. Electronic games of chance with mechanical displays;

3. Blackjack;

4. Pull-tabs or break-open tickets when not played at the same location where bingo is being played;

5. Menominee Lotto; and

6. Pari-mutuel racing and wagering activity, including simulcasting, which is conducted at the Kenosha facility in accordance with Section XXXVII.

B. The Tribe may not operate any Class III gaming not expressly enumerated in this Section of this Compact unless this Compact is amended pursuant to Section XXXI or Section XXXVIII.

C. Except as provided in par. XV.D.17., the Tribe shall not conduct or permit any Class III gaming or any component thereof outside Tribal lands including use of common

carriers (such as telecommunications, postal or delivery services) for the purpose of sale of a ticket or playing card to, or placement of a wager by, a person who is not physically present on Tribal lands to purchase the ticket or card or place the wager. This Section shall not prohibit the transmission of live races from the Kenosha facility for the purposes of accepting simulcast wagers at another racetrack.

D. In the event that the State, after the date on which this Compact becomes binding on the parties, commences actual operation, or licenses or permits the operation, of games not specifically enumerated under subsec. A., this Compact shall be reopened upon written request from the Tribe, for the specific purposes of including such games in subsec A. and of negotiating amendments establishing the Tribal regulatory and State oversight requirements for such games.

E. Should the State, after this Compact becomes binding on the parties, agree to include any additional game in a tribal/state gaming compact, other than as a substitute for one or more of the games listed in paragraphs A.1. through A.3., above, and other than games presently operated or licensed by the State, this Compact shall be reopened on the written request of the Tribe, for the specific purposes of including such game(s) in subsec. A. and of negotiating amendments establishing the Tribal regulatory and State oversight requirements for such games(s).

F. In the event that game(s) not included in pars. A.1. through A.3., above, are included in procedures prescribed for another Wisconsin Indian tribe by the Secretary of the Interior pursuant to Section 11 (d)(7)(B)(vii) of the Act, then this Compact shall be reopened upon the request of the Tribe, but only after the State and the other tribe have exhausted their remedies under the federal administrative procedure act, and only for the specific purposes of including such game(s) in subsec. A., above, and of establishing the Tribal regulatory and State oversight requirements for such game(s).

G. The Tribe may not operate more than 60 Blackjack tables and 4,000 electronic games of chance at the Kenosha facility without the prior written consent of the Department. If the Tribe at any time operates more than 3,500 electronic games of chance at the Kenosha facility, it shall pay to the State the additional amount set out in Section XXXIII.C.6.

V. CONDUCT OF GAMES, GENERALLY.

A. No person under 21 years of age may play, or be permitted by the Tribe to play, any game authorized by this Compact. If any person below the age of 21 plays and otherwise qualifies for a prize or winnings, the prize or winnings shall not be paid, and the estimated amount wagered during the course of the game shall be returned to the minor. No person under the age of 21 shall be permitted access to any portion of any facility in which any Class III game is conducted, except for purposes of employment

pursuant to Section V.B., or to gain access to the Tribe's non-Class III gaming facilities.

B. No person under 18 years of age may be employed in the conduct of gaming under this Compact; provided, however, that persons 16 years of age or older may be employed with respect to the racetrack portion of the Kenosha facility.

C. No person who is visibly intoxicated shall be permitted to play any game authorized by this Compact.

D. All gaming shall be conducted on a cash basis. Except as herein provided, no person shall be extended credit for gaming by any tribal gaming facility, nor shall the Tribe permit any other person to offer such credit for a fee. This Section shall not restrict the right of the Tribe to install or accept bank card or credit card transactions in the same manner as would normally be permitted at any retail business within the State.

E. The Tribe shall establish procedures for each gaming facility for the resolution of complaints arising from disputes with patrons involving payment of any wager or pay-out of any Class III game. Prior to implementation, the Tribe shall submit these procedures for approval by the Department at least sixty (60) days prior to the opening of the Authority's Kenosha facility (for such facility) and within one year of the opening of the Kenosha facility (for the Tribe's other gaming facility). Such procedures shall include:

1. Written notice shall be conspicuously posted at each gaming facility to inform patrons of the player dispute resolution policy which shall identify the various steps in resolving a complaint.

2. At the conclusion of the Tribe's player dispute resolution process, the patron may request that the Department review and investigate the complaint. The Tribe shall submit all records regarding their investigation within ten (10) days of the request. The Department may conduct an investigation and present its findings and recommendations to the Tribe.

F. Alcohol Beverages. Alcohol beverages may be served at locations where games authorized under this Compact are conducted only during the hours prescribed in sec. 125.32 (3), Wis. Stats. Alcohol beverages may not be sold for the purpose of off-premises consumption at locations where games authorized under this Compact are conducted.

G. Individuals Excluded from Tribal Gaming Facilities.

1. The Tribe shall permanently exclude from any and all premises on which Class III gaming is conducted any individual found by the Tribe or Department to have committed any of the following activities:

a. Using or possessing while in a Class III gaming facility a device to:

(1) Assist in projecting the outcome of a game;

(2) Assist in keeping track of cards played;

(3) Assist in analyzing the probability of the occurrence of an event relating to a Class III game; or

(4) Assist in analyzing the strategy for playing or wagering to be used in a Class III game, except as authorized by a Tribal gaming ordinance.

b. Altering the selection of criteria which determines the result of a Class III game or the amount or frequency of payment in a Class III game.

c. Placing a wager after acquiring knowledge, not available to all players, of the outcome of the Class III game which is the subject of the wager or to aid the person in acquiring the knowledge for the purpose of placing a wager contingent on that outcome.

d. Claiming, collecting, taking, or attempting to claim, collect or take, money or anything of value in or from a Class III game, with intent to defraud, without having made a wager contingent on winning the Class III game, or claiming, collecting or taking an amount of money or thing of value of greater value than the amount won.

e. Attempting any of the foregoing, or aiding another in committing or attempting to commit any of the foregoing.

2. For all persons found by the Tribe to have committed one or more of the foregoing practices, the Tribe shall issue a written notice of its finding and forward the notice to the Department within five (5) days of its issuance. The notice shall contain, at a minimum, the following information for each excluded person:

a. Full name, date of birth and all known aliases;

b. A physical description;

c. The effective date of the exclusion and the reasons therefor;

d. A photograph; and

e. The person's occupation, last known home address and business address;

3. The Tribe shall maintain a listing of all persons excluded from its Class III gaming facilities which contains, if available, all information required under sub. 2.

H. The Tribe and Authority agree that at all times Tribal regulatory authority over the Kenosha facility shall be exercised exclusively by an independent Tribal gaming commission. The State acknowledges that the Tribal gaming commission organized and operated pursuant to Ordinance 93-30 of the Menominee Indian Tribe of Wisconsin (as the same exists as of December 31, 1999) is an independent Tribal gaming commission. The organization and operation of the Tribal gaming commission may be changed by the Tribe so long as the Tribe obtains the consent of the Department to such change. Such consent shall not be unreasonably withheld.

I. Notwithstanding any other provision of the Compact, the Tribe agrees that at such time as the Kenosha facility opens, it shall operate no more than (1) one Class III gaming facility on its reservation and (2) the Kenosha facility.

VI. PROPRIETARY INTEREST.

The Tribe shall have the sole proprietary interest in all Class III gaming activities operated under this Compact and shall not authorize, permit, or license the operation of any Class III gaming activity under this Compact by any other person, except that the Tribe may enter into a management contract subject to the provisions of Section VIII. of this Compact and Section 12 of the Act, and except for licensing expressly provided in Section XVII of this Compact.

VII. GAMING-RELATED CONTRACTOR, CONTRACTOR TO HOLD STATE CERTIFICATE.

A. "Gaming-related contract" means any agreement under which the Tribe procures for Class III gaming materials, supplies, equipment or services which are unique to the operation of gaming and not common to ordinary Tribal operations (such as accounting or legal services), but excluding those contracts regulated by the State pursuant to sec. 562.02(1)(d), Wis Stats. The term "gaming-related contract" includes, but is not limited to:

1. Management contracts;

2. Management consultation services regarding the administration, supervision, or training of one or more functions related to gaming management or operations under this Compact;

3. Contract security services;

4. Prize payout agreements or annuity contracts;

5. Procurement (including lease) of materials, supplies, equipment or services involving marketing, maintenance or repair of gaming-related equipment, tickets and other gaming supplies or materials, the receiving or recording of a player's gaming selections or wagers, and the determination of winners;

6. Financing of facilities in which gaming under this Compact is operated, except financing by a U.S. domiciled insurance company, financing by a state or federally chartered financial institution, or financing by or through any broker-dealer licensed in Wisconsin.

7. Any gaming test laboratory determined by the Department to be performing services pursuant to Section XV.B. of this Compact, shall be required to obtain a gaming-related contractor certificate;

8. Agreements with the independent accounting or audit firm engaged by the Tribe for purposes of the conduct of the financial and security audits pursuant to Section XII. of this Compact; and

9. Agreements with vendors of financial services for casino patrons, including but not limited to agreements to provide check cashing services, regardless of the amount of compensation, or if no compensation is received from the Tribe.

10. No person may provide any goods or services defined in Section VII.A.7. through 9. of this Compact, regardless of any consideration involved, without obtaining a certificate issued by the Department under this Section. No Tribe may receive goods or services defined in Section VII.A.7. through 9. of this Compact from any person, regardless of any consideration involved, unless the person holds a certificate issued by the Department under this Section.

B. The Tribe shall not enter into or maintain a gaming-related contract involving total consideration exceeding $10,000 in any calendar year with any person unless that person holds a Certificate issued by the Department under this Section.

C. No person may enter into or maintain a gaming-related contract with the Tribe involving total consideration exceeding $10,000 in any calendar year unless the person holds a Certificate issued by the Department under this Section.

D. Certificate issued by Department.

1. A Certificate shall be issued to a person, and the person may continue to hold a Certificate, unless the person:

a. Has been convicted of, or entered a plea of guilty or no contest to, any of the following during the immediately preceding 10 years, unless the person has been pardoned:

(1) A felony;
(2) Any gambling-related offense;
(3) Fraud or misrepresentation in any connection; or
(4) A violation of any provision of chs. 562 or 565, Wis. Stats., a rule promulgated by the Lottery Board, Wisconsin Racing Board, Department of Administration or successor agency, or any substantially similar Tribal ordinance regulating or prohibiting gaming.

b. Is determined by the Department to be a person whose prior activities, criminal record if any, or reputation, habits, and associations (including employees and agents in relation to a gaming-related contract) pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of gaming or the carrying on of the business and financial arrangements incidental thereto; provided, however, that the fact that a person provided materials, supplies, equipment or services to the Tribe in relation to Class III gaming prior to the date on which this Compact becomes binding on the parties shall not be considered in making determinations under this subdivision.

c. Is determined by the Department to have knowingly or willfully provided materially important false information to the Department or to the Tribe, or has refused to respond to questions propounded pursuant to subdiv. D.3.a., or is determined by the Department to have failed to respond to a request for information pertaining to an application for gaming-related contractor certification within thirty (30) days of the date of the request from the Department.

d. Determinations of the Department under subdivs. a., b., and c. are subject to judicial review as provided in sec. 227.52, Wis. Stats.

e. Except as provided in subdiv. f., if the person is:

(1) A partnership, then subdiv. a. applies to the partnership and each general and limited partner of the partnership.

(2) An association, then subdiv. a. applies to the association and each officer and director of the association.

(3) A corporation, then subdiv. a. applies to the corporation, each officer or director of the corporation and each owner, directly or indirectly, of any equity security or other ownership interest in the corporation. In the case of owners of publicly held securities of a publicly traded corporation, subdiv. a. applies only to those persons who are beneficial owners of 5% or more of the publicly held securities.

(4) A limited liability company, then subdiv. a. applies to the limited liability company; each member of the limited liability company; any assignee of a limited liability company interest, or person who holds directly or indirectly a limited liability company interest; and any manager of a limited liability company. The terms used herein shall be defined as in the Wisconsin Statutes.

f. The restrictions under subdiv. a. do not apply to the partnership, association, corporation or limited liability company if the Department determines that the partnership, association, corporation or limited liability company has terminated its relationship with the partner, officer, director, manager or owner who was convicted or entered the plea or with the partner, officer, director, manager, owner or other individual whose actions directly contributed to the partnership's, association's, corporation's or limited liability company's conviction or entry of plea.

g. Any conviction, guilty plea or plea of no contest of any partnership, limited partnership, association, corporation or limited liability company shall be imputed to any individual who, though not convicted, directly contributed to the transaction giving rise to the conviction, guilty plea or plea of no contest.

2. Investigations necessary for the determinations under this Section shall be conducted by the Department with the assistance of the Department of Justice. Persons holding Certificates under this Section shall be subject to periodic

review in order to determine continuing compliance with the requirements of this Section.

3. Any person applying for or holding a Certificate under this Section shall:

a. Respond, under oath, to such written or oral questions that the Department may propound in the performance of its responsibilities under this Section.

b. Pay to the State a fee that covers both the vendor's application filing and any other amount as previously determined by the Department and identified in the application for gaming-related certification in conducting investigations and making determinations under this Section. In the event the cost of the investigation exceeds the set amount in the application for gaming-related certification, the Department may require the applicant to pay the difference. All fees assessed in the submission of an application and investigation shall be non-refundable. Investigation costs shall include, but are not limited to, travel expenses, personnel expenses and all fees.

c. Be fingerprinted on four (4) fingerprint cards each bearing a complete set of the person's fingerprints. The Department of Justice may submit the fingerprint cards to the Federal Bureau of Investigation for the purpose of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrests and convictions.

d. Submit to the Department a list of all states in which the person has done business within the last ten (10) years. The list shall include license or permit numbers (if issued) and the operative dates of the license(s) or permit(s).

e. After an entity is certified by the Department, the entity shall file a report of each change of individuals identified in Section VII.D.1.e. and key employees within thirty (30) days after appointment or election. The identification of principals and key employees shall be as set forth in the application material for a gaming-related contractor certificate. The entity's certification shall remain valid throughout the review process of the new principals and key employees.

E. Tribal and State Cooperation and Consultation.

1. Upon receipt of an application for a certificate under this Section, the Department will promptly:

a. Forward to the Tribe notice of receipt of the application. The notice shall include the name of the applicant, identification of goods and services offered, and the tribe or tribes with which the applicant is requesting to conduct business during the period of certification. The Department shall forward copies of the application with supporting documentation within ten (10) days of receipt of a written request from the Tribe.

b. Invite the Tribe to provide information concerning the fitness and eligibility of the applicant for a certificate under this Section; and

c. Invite the Tribe's recommendation as to whether a certificate should issue and the Tribe's reasons therefor.

2. Where the Tribe has elected to consult with the State under par. 1., above, and in the event it appears that a certificate should not be issued to the applicant:

a. The Department shall, before making a determination under this Section, offer to consult with the Tribe concerning the factual basis and reasons for the proposed denial; and

b. If, after consultation under subdiv. a., the Department determines that a certificate should not issue to the applicant, the Tribe shall have the right to appeal the matter to the Department and be heard thereon. Any decision of the Department shall designate the Tribe as an interested party for purposes of judicial review under ch. 227, Wis. Stats.

3. State/Tribal Investigative Liaison.

a. The Department shall appoint a Regulation Compliance Investigator/Auditor to be the State/Tribal liaison for investigations under this Compact for the Kenosha facility who shall be the primary contact for the State to exchange information with Tribal Investigators.

b. Information exchanged between the Tribe and the State Investigator under this Section shall be considered Tribal Records and as such be subject to the confidentiality provisions of this Compact and not subject to public inspection.

F. The Tribe shall include the following provisions in any gaming-related contract:

1. The contract shall be terminated if, during the term of the contract or any extension thereof, the person's Certificate under this Section is revoked by the Department;

2. The contract is subject to the provisions of this Compact; and

3. A Certificate issued under this Section of the Compact shall not constitute a property interest under state or federal law.

Provided, however, that if any such provision is not expressly stated in a gaming-related contract, by making an application for a Certificate the contractor agrees that such provision shall be deemed to be a part of each such contract and binding on both the Tribe and contractor.

G. The Department in addition to such other review or reconsideration procedures as it may adopt, shall upon receipt from the Tribal Legislature or its Chairman of a written request for reconsideration of any action associated with the Tribe or associated with an existing or proposed Tribal gaming-related contractor, provide reconsideration of its determination, considering each reason specified in the request. A representative of the Tribe shall, upon written request, be heard by the Department concerning the reconsideration of the determination.

H. Transitional Provision. Subsections B. and C. above notwithstanding, a person who has a gaming-related contract in effect with the Tribe on the date this Compact first became binding on the parties [June 3, 1992], may continue to perform under such contract pending final decision on issuance of a Certificate under this Section to such person provided that:

1. Within ten days after this Compact first became binding on the parties [June 3, 1992], the Tribe provides to the Department a list of all such persons, with their addresses and a specification of the materials, supplies, equipment or services under contract; and

2. Within ten days after this Compact first became binding on the parties [June 3, 1992], such person included in the list applies to the Department for a Certificate under this Section.

I. Sanctions against Tribes and Contractors for Non-Compliance.

1. Any person who violates Section VII.A.10., B., C. or J. of this Compact with respect to the Kenosha facility shall pay to the State up to $25,000 per violation.

2. Prior to imposing any such sanctions against the Tribe, the Department shall give the Tribe a detailed statement as to the factual basis and reasons for the proposed sanction. Prior to the imposition of any sanctions, the person accused of entering into a gaming-related contract without a certificate shall have a right to a hearing before the Department (if a contractor) or before a Hearing Examiner chosen in accordance with Section XXI.F.6. (if the Tribe). The provisions of ch. 227, Wis. Stats. shall govern the conduct of such hearings. The decision of the Department (if a contractor) or the Hearing Examiner (if the Tribe) in the matter shall be subject to judicial review pursuant to sec. 227.52, Wis. Stats.

J. Any person producing any gaming related goods or services in a substantially completed form, and which gaming related goods or services are provided to the Tribe through a third party vendor in an amount in excess of $10,000 in any calendar year, shall be required to obtain a gaming related contractor certificate.

K. Certificate Suspension and Revocation.

1. The Department may suspend or revoke any previously issued gaming-related contractor certificate for the following reasons:

a. If new or additional information comes to the attention of the Department concerning facts arising either prior to or subsequent to the issuance of a certificate which would violate the criteria to hold a certificate set out in under subsec. D. above.

b. If the Department determines continued certification of the person or entity constitutes a threat to the public health, welfare and safety.

c. If the Department determines continued certification of the person or entity constitutes a threat to the integrity of Class III gaming.

d. If the Department determines a gaming-related contractor is distributing goods or services in excess of $10,000 per year for a vendor who does not hold a certificate issued by the Department.

e. Any findings of non-compliance with this Compact.

2. Before suspending or revoking a gaming-related contractor certificate, the Department shall offer to consult with the Tribe concerning the factual basis and reasons for the proposed denial. Prior to the suspension or revocation of a certificate, the certificate holder shall have a right to a hearing before the Department. The provisions of ch. 227, Wis. Stats., shall govern the conduct of such hearings. The decision of the Department in the matter shall be subject to judicial review pursuant to sec. 227.52, Wis. Stats.

L. Suspension or revocation of a Certificate shall have no impact on then-existing contractual obligation(s) of the Tribe, if any, to repay any bonds, notes, loans, borrowings, or other debts incurred prior to the date of suspension or revocation, together with interest thereon (not to exceed a commercially reasonable rate of interest).

M. Temporary Certification. The Department shall have the authority to grant a temporary certificate to a gaming-related contractor applicant which has met criteria determined by the Department. An application shall not be considered complete until all information requested by the Department has been supplied. Within sixty (60) days of the Department's receipt of a completed application and upon receipt of a written request by the Tribe, the Department may issue a temporary certificate if all criteria are met. Receipt of any information that may be used by the Department in denying a request to issue a temporary certificate shall be deemed confidential and not disclosed to the Tribe or applicant. The temporary certificate shall become void upon the issuance, denial or revocation of a gaming-related contractor certificate in accordance with the provisions of this Compact. If after receiving temporary certification, the Department finds cause to deny the contractor a certificate, any contract entered into by the contractor and the Tribe shall be considered null and void, and all consideration received by the contractor returned to the Tribe.

VIII. MANAGEMENT CONTRACTS.

A. The Tribe agrees that, subject to the Certificate requirements of Section VII. of this Compact, the Tribe may enter into a management contract for the operation and management of a Class III gaming activity permitted under this Compact. Before approving such contract, the Tribe shall insure that the following information is supplied to the Department at least 60 days prior to the Tribe's approval of the contract:

1. The name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such

contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 5 percent or more of its issued and outstanding stock;

2. A description of any previous experience that each person listed pursuant to par. 1. has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency which has issued the person a license or permit relating to gaming or with which such person has had a contract relating to gaming;

3. A complete financial statement of each person listed pursuant to par. 1.; and

4. A copy of any proposed contract, and, thereafter copies of any subsequent draft or update of the contract.

B. Any person listed pursuant to subsec. A. shall be required to respond under oath to such written or oral questions that the Tribe or the Department may propound in accordance with their responsibilities under this Section.

C. The Tribe shall not enter into a management contract unless the contract provides at least:

1. For adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

2. For access to the daily operations of the gaming activities to appropriate officials of the Tribe, the Department or the Department of Justice who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

3. For a minimum guaranteed payment to the Tribe, that has preference over the retirement of development and construction costs;

4. For an agreed ceiling for the repayment of development and construction costs;

5. For a contract term not to exceed five years, except that the Tribe may approve a contract term that exceeds five years but does not exceed seven years if, after consultation with the Department, the Tribe is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time;

6. For a complete, detailed specification of all compensation to the Contractor under the contract; and

7. For grounds and mechanisms for terminating such contract, including summary termination upon revocation of the management contractor's Certificate under Section VII. of this Compact.

D. If the initial term of a management contract is five (5) years or more, the Tribe shall not (without the consent of the management company) terminate such contract without prior consultation with, and the prior approval of, the Department. The parties agree that such approval shall not be unreasonably withheld.

E. The Tribe may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity, which shall not exceed thirty percent, unless the Tribe, after consultation with the Department, determines that the capital investment required, and income projections, for such gaming activity, require an additional fee, which in no event shall exceed forty percent of net revenues of such gaming activity. A contract providing for a fee based upon a percentage of net revenues shall include a provision describing in detail how net revenues will be determined.

F. With respect to the Kenosha facility, any of the foregoing provisions in this Section VIII may be waived by the Department, upon the request of the management company upon a showing of good cause.

IX. CRIMINAL AND BACKGROUND RESTRICTIONS.

A. The Tribe agrees that no person may be employed in the operation or conduct of gaming under this Compact, and the Tribe shall not permit a gaming related contractor to employ any person in the course of performance under the contract, if that person:

1. Has been convicted of, or entered a plea of guilty or no contest to, any of the following, unless the person has been pardoned:

a. A felony, other than a felony conviction for an offense under subdiv. b., c. or d., during the immediately preceding 10 years;

b. Any gambling-related offense;
c. Fraud or misrepresentation in any connection; or
d. A violation of any provision of chs. 562 or 565, Wis. Stats., a rule promulgated by the Lottery Board, Wisconsin Racing Board, Department of Administration or successor agency, or a Tribal ordinance regulating or prohibiting gaming.

2. Has been determined by the Tribe to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of gaming or the carrying on of the business and financial arrangements incidental thereto.

B. The restriction in par. A.1. shall not disqualify an applicant or employee, other than a key employee (as defined in subsec. F) who is not a tribal member, if the Menominee Tribal Legislature waives such restriction by legislative resolution after the applicant or employee has demonstrated to the Legislature evidence of sufficient rehabilitation and present fitness. Should the Legislature waive the restriction in par. A.1. for any individual, the Legislature shall provide the Department with notification of such action not less than thirty (30) days prior to the proposed commencement of employment by the individual. The notification shall include at a minimum, the following information:

1. Full name of the applicant, including all previous names or aliases;

2. Complete address record for the individual for the preceding ten (10) years;

3. Social security number and date of birth for the individual;

4. A complete copy of any criminal, court or police record evidencing the offences with which the individual has been charged or convicted; and

5. The action taken by the Legislature and the reason for such action.

C. The Tribe shall have primary responsibility for the investigations and determinations under this Section, and shall retain for a period of at least 7 years, all records relating to such investigations and determinations.

D. Persons subject to this Section shall be periodically reviewed (at least every two years) to determine whether they continue to meet the requirements and limitations of this Section.

E. Criminal history data compiled by the Department of Justice on any person subject to subsec. A. shall, subject to applicable federal or state law, be released to the Tribe as part of its report regarding each person, and the Tribe shall reimburse the State for the Department's actual costs of compiling the data.

F. The Department shall have the authority to conduct background checks of key employees of the Kenosha facility. A key employee is any employee of the Tribe or a management company having the power or authority to exercise a significant influence over decisions concerning any part of the operation of the Kenosha facility. A key employee may work at the Kenosha facility until a determination adverse to the employee is made pursuant to the procedures in subsec. H.

1. If additional information is requested for the purpose of determining the applicant's eligibility, the Department shall notify the applicant, who shall provide such supplemental information.

2. Investigations necessary for the determinations under this Section shall be conducted by the Department with the assistance of the Department of Justice.

G. The Department may challenge the suitability of the key employee for employment at the Kenosha facility if any of the following apply:

1. The person has been convicted of a felony within ten (10) years preceding the date of application in a state or federal court for which he or she has not been pardoned and restored to full civil rights or has been charged with the violation of a state or federal law which is a felony if that charge has not been dismissed or settled in any other way.

2. The key employee is a person whose prior activities, criminal record if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of gaming.

3. The person has been convicted of fraud or misrepresentation in any connection.

4. The person has been determined by the Department to have knowingly and willfully provided materially important false information to the Department or to the Tribe, refused to respond to questions in connection to such application, or refuses to file an application.

H. The Department may challenge the suitability of a key employee to be employed at the Kenosha facility. The following procedures shall apply:

1. The Department shall provide a notice to the Tribe and the key employee of its determination and specifying the reasons why the employee is not suitable for employment at the Kenosha facility. The Tribe shall respond in writing within 10 working days stating either: that they agree with the Department's determination, and specifying the procedures to be followed to terminate person's employment; or stating that they disagree with the Department's determination, and specifying the reasons supporting that conclusion. If the Tribe agrees with the Department's determination, the key employee shall immediately be barred from the premises of the Kenosha facility and removed of any responsibility and authority as an employee of the Kenosha facility.

2. Within 10 days of receipt of a notice from the Tribe pursuant to sub. 1 that it disagrees with the Department's determination a key employee is unsuitable for employment, the Department may request a hearing before a Hearing Examiner chosen in accordance with Section XXI.F.6. The provisions of ch. 227, Wis. Stats., shall govern the conduct of such hearings. The decision of the Hearing Examiner in the matter shall be subject to judicial review pursuant to sec. 227.52 Wis. Stats.

X. RECORDS.

A. In addition to records specifically required under other provisions of this Compact, the Tribe shall also maintain, and the State shall have the right to inspect and copy or receive delivery of records related to Class III gaming for at least seven years after the record is created or such shorter period of time as may be agreed to by the Tribe and Department. To provide for the inspection and copying of records as set forth in the provisions of the Compact, the Department may require that such records be delivered to its office for purposes of review and copy within ten (10) days of the date of the written request. All expenses related to the preparation, submission, copying and delivery of copies or records shall be incurred by the Tribe. Any such records submitted to the Department shall be deemed confidential and not subject to public inspection. These records shall include but not be limited to:

1. All accounting records, which shall be kept on a double entry system of accounting, including detailed, supporting and subsidiary records;

2. Revenues, expenses, assets, liabilities and equity by game at each location where any component of Class III gaming, including ticket sales, is conducted;

3. Daily cash transactions for each game at each location at which any component of Class III gaming is conducted, including but not limited to transactions relating to each gaming table bank, game drop box and gaming room bank;

4. For electronic games of chance, analytic reports which, by each machine, compare actual hold percentages to theoretical hold percentages;

5. Contracts, correspondence and other transaction documents relating to all vendors and contractors;

6. Records of all Tribal enforcement activities relating to gaming operated under this Compact;

7. All audits prepared by or on behalf of the Tribe;

8. Personnel information on all Class III gaming employees or agents, including complete sets of each employee's fingerprints, employee photographs, and employee profiles and background investigations, except that employee work schedules shall be maintained for a period of at least 2 years. This provision shall not include personnel records of tribal members as to matters that are not related to gaming;

9. Records of background investigations and determinations under Section IX. of this Compact;

10. Reports and data which have been generated or created by the on-line slot accounting system. Daily on-line slot accounting system data shall be stored in a retrievable form for a period of at least seven (7) years from the date of creation; and

11. Copies of surveillance recordings, which shall be maintained for a period of thirty (30) days.

B. Confidentiality of Tribal Gaming Records.

1. The Tribe requires that its gaming records be confidential. The State and the Tribe agree that the State does not otherwise have a right to inspect or copy tribal gaming records. However, in order to enable the State to perform its oversight and enforcement functions and responsibilities under this Compact, the Tribe required that the State pledge, and the State does so pledge, that any tribal records or documents submitted to the State, or of which the State has retained copies in the course of its gaming oversight and enforcement, will not be disclosed to any member of the public except as needed in a judicial proceeding to interpret or enforce the terms of this Compact. In return, the Tribe has granted the State the right to inspect and copy the Tribal records as provided in this Compact.

2. This Compact is provided for by federal law and therefore supersedes state records law to the contrary.

C. The Tribe shall have the right to inspect and copy all State records concerning the Tribe's Class III gaming; provided, that the State may withhold access to records as permitted under the state public records law, sec. 19.35, et seq., Wis. Stats.

XI. CONFLICTS OF INTEREST PROHIBITED.

A. The Tribe shall adopt within its Gaming Code provisions restricting the conduct of gaming by persons employed by the Tribe.

B. No person employed by the Tribe in the conduct of gaming under this Compact may have a direct or indirect interest in, or be employed by, any person who has entered into a gaming-related contract with the Tribe. The Department may waive this requirement if, prior to employment, the Tribe requests a waiver for a person who has an interest in the management company and the Department is satisfied that such employee has acquired such interest in exchange for services actually provided and that the employee had no role in the decision to award the management contract.

C. The Tribe shall prohibit the participation in gaming by the following individuals at the Kenosha facility:

1. Tribal Class III gaming employees;

2. Tribal gaming commissioners;

3. Tribal officials associated with the operation of Class III gaming;

4. Officers, Directors, and employees of a management company granted a certificate pursuant to Section VII; and

5. The immediate family members of the individuals identified in sec. C.1.-4,. as defined in s. 19.42(7), Wis. Stats.

XII. AUDITS.

A. Financial Audit. Prior to the close of each Tribal fiscal year, the Tribe shall engage a firm of independent Certified Public Accountant(s) (CPA(s)) that currently maintains a gaming-related contractor certificate or temporary gaming-related contractor certificate issued by the Department, to audit the books and records of all gaming operations conducted under this Compact. The Tribe shall obtain the concurrence of the Department in its choice of audit firm.

1. The independent CPA(s) shall submit an executed copy of the Tribal engagement letter outlining the agreed-upon procedures for the audit to the Department not less than ninety (90) days prior to the end of the Tribal fiscal year.

2. The Department shall review the engagement letter and submit any comments and recommendations regarding the audit to the independent CPA(s) within thirty (30) days of receipt of the engagement letter.

3. The completed audit shall, at a minimum, include separate gross and net revenue figures for each type of Class III game conducted under the Compact.

4. At a minimum, the audit report shall include the opinion of the CPA(s), management letters, balance sheets, cash flow statements, income statements and a statement of retained earnings.

5. Department staff or authorized representatives of the Department shall be permitted to accompany the CPA(s) during any on-site reviews, subject to reasonable objections of the audit firm, and shall have access to all audit documents and working papers without Tribal notification, provided that all such audit documents and working papers shall remain confidential Tribal records.

6. The audit shall be conducted in accordance with the most recent version of the American Institute of Certified Public Accountants (AICPA) casino auditing guide.

7. The audit shall be completed within one-hundred-twenty (120) days of the close of the Tribal fiscal year. Within thirty (30) days of completion of the audit, the Tribe shall forward copies of all audit reports and management letters to the Legislative Audit Bureau and the Department.

8. The Department may retain CPA(s), at the Tribe's expense, to perform the annual audit if the financial statement and audit is not submitted to the Department within one-hundred-eighty (180) days of the close of the tribal fiscal year. In the event such an audit is initiated, the Tribe shall fully cooperate, including providing access to all books and records, to the CPA(s) retained by the Department.

B. Security Audit. The security audit shall be conducted once every calendar year by a firm qualified to conduct audits of casino operations that is not affiliated with the Tribe. The firm shall maintain a gaming-related contractor certificate or temporary gaming-related contractor certificate issued by the Department.

1. The firm shall submit an executed copy of the tribal engagement letter outlining the agreed- upon procedures for the audit to the Department not less than ninety (90) days prior to the end of the calendar year.

2. The Department will review the engagement letter and submit any comments and recommendations regarding the audit to the independent auditors within thirty (30) days of receipt of the engagement letter.

3. The audit shall be completed by April 30th every year. Within thirty (30) days of the completion of the audit, the auditors shall forward copies of all audit reports and management letters to the Legislative Audit Bureau and the Department.

4. Department staff or authorized representatives of the Department shall be permitted to accompany the auditors during any on-site reviews and shall have access to all audit documents and working papers without Tribal notification.

5. The purpose of the security audit shall be to review and evaluate the effectiveness, adequacy and enforcement of policies and procedures using the following criteria:

a. Audit for compliance with the Tribe's approved minimum internal control standards;

b. Review all Class III gaming-related vendors to determine Tribal compliance with Section VII. of the Compact;

c. Evaluation of the on-line slot accounting system security to determine system access and integrity; and

d. The Department may request additional items to be included in the security audit upon review of the auditor's engagement letter.

6. The Department may retain a CPA or other qualified auditor, at the Tribe's expense, to perform the annual audit if the security audit is not submitted to the Department by June 30th every year.

C. Engagement of Auditors.

1. The Tribe shall engage auditors experienced in auditing gaming who shall perform the audit in conformity with the most current edition of "Accounting and Audit Guide-Casinos," published by the American Institute of Certified Public Accountants.

2. The Tribe shall give the State Auditor and the Department 30 days' written notice of its intent to engage an auditor under this Section, and with the notice shall also forward a draft of the proposed engagement letter and audit procedures. The State Auditor or the Department may submit written comments or objections concerning the engagement to the Tribe.

3. The Tribe shall permit the State Auditor or the Department to consult with the auditors before or after any audits or periodic checks on procedures that may be conducted by the auditors; shall, upon written request, make the auditors' work papers available for review at the office of the accountant or the Tribe; and shall allow the State Auditor or Department to submit written comments or suggestions for improvements regarding the accounting and audit procedures. Within 30 days of receipt of any written comments or suggestions, the Tribe shall respond in writing to the comments or suggestions.

D. Approval of Internal Controls.

1. The Tribe shall submit to the Department for approval the internal control procedures to be used at the Kenosha facility, and any subsequent amendments thereto. Such approval shall not be unreasonably withheld. The internal control procedures shall be submitted within sixty (60) days prior to the date the Kenosha facility opens. Any subsequent amendment

proposed by the Tribe shall be submitted to the Department for approval prior to its implementation. The minimum internal control procedures, or any amendments thereto, shall be deemed approved unless the Department provides a written notice of disapproval within ten (10) days of receipt of the amendment. The notice shall specify the reasons for disapproval. The Tribe may use any minimum control procedure not approved until completion of the procedures set out in sub. 2.

2. The Department has the right to appeal the Tribe's use of any part of the internal control procedures or amendments which have not been approved by the Department to a three-member arbitration panel:

a. The panel shall consist of three CPAs, one (1) chosen by the Tribe, one (1) chosen by the Department, and the third (3rd) chosen by the other two (2) panel members. No person who has performed services, or whose firm has performed services, for either the Department or the Tribe in the preceding two years, may serve on the panel;

b. The panel shall approve the internal control procedure(s) or amendment unless it determines that use of the procedure would:

1. materially increase the risk of diversion of revenue, either due to deficiencies in the procedure or in comparison to any alternative procedure offered by the Department, and the risk is not outweighed by the cost of compliance with the proposed procedure;

2. materially decrease the ability to safeguard assets, either due to deficiencies in the procedure or in comparison to any alternative procedure offered by the Department, and the risk to the ability to safeguard assets is not outweighed by the cost of compliance with the proposed procedure;

3. materially decrease the ability to preserve reliable records, accounts and reports of transactions, either due to deficiencies in the procedure or in comparison to any alternative procedure offered by the Department, and the risk is not outweighed by the cost of compliance with the proposed procedure;

c. To the extent practicable, the parties shall stipulate to all facts not reasonably in dispute. At the request of either party, the panel may

take testimony from witnesses if it feels that such procedures are necessary for an informed resolution of the controversy. The formal rules of evidence shall not apply to witness testimony, and the panel shall determine the permissible scope and extent of any proffered testimony, but the panel shall observe basic principles of relevancy, materiality and probative value. Any and all proceedings may be conducted telephonically. Each party shall simultaneously submit, at a time determined by the panel after the factual record is finalized, a written statement in support of its position. The panel shall decide the matter within seven (7) days of receipt of the testimony and written submission. The decision of the panel shall be final and non-appealable. The parties shall equally split the cost of the panel, and bear its own cost of the proceedings.

3. If the State determines that the Tribe is not following any procedure contained in the internal control procedures it shall provide written notice to the Tribe specifying the non-complying conduct, and providing any documentation which supports its conclusion. The Tribe shall provide a written response within seven (7) business days of receipt of the notice, which shall either acknowledge the non-compliance and detail the procedures implemented to cure the non-compliance, or provide its rationale as to why it is in compliance. If the Tribe does not respond within seven (7) business days, the allegations contained in the Department's notice shall be considered true and accurate for purposes of further proceedings under this Compact.

4. If the parties cannot reach agreement as to whether the Tribe is in compliance with the internal control procedure(s), or whether the proposed remedial action by the Tribe actually remedies the non-compliance, either party may obtain a hearing before a three-member arbitration panel:

   a. The panel shall consist of three CPAs, one (1) chosen by the Tribe, one (1) chosen by the Department, and the third (3rd) chosen by the other two (2) panel members. No person who has performed services, or whose firm has performed services, for either the Department or the Tribe in the preceding two (2) years may serve on the panel;

   b. To the extent practicable, the parties shall stipulate to all facts not reasonably in dispute. At the request of either party, the panel may take testimony from witnesses if it feels that such procedures are necessary for an informed resolution of the controversy. The formal rules of evidence shall not apply to witness testimony, and the panel shall determine the permissible scope and extent of any proffered testimony, but the panel shall observe basic principles of relevancy,

materiality and probative value. Any and all proceedings may be conducted telephonically. Each party shall simultaneously submit, at a time determined by the panel after the factual record is finalized, a written statement in support of its position. The panel shall decide the matter within seven (7) days of receipt of the testimony and written submission. The decision of the panel shall be final and non-appealable. The parties shall equally split the cost of the panel, and bear its own cost of the proceedings, except as set forth in sub. c.; and

If the panel determines that the Tribe was not in compliance with the internal control procedure(s) and the proposed remedial action is insufficient to achieve compliance, the panel shall specify the procedures the Tribe shall use to achieve compliance. This remedy shall be in addition to any other remedy available to the State pursuant to the Compact.

E. Internal Auditor. The Authority shall identify a position that is responsible for the internal auditing of Class III gaming operations at the Kenosha facility and for compliance with the Compact provisions. This position shall not be supervised by casino management and shall report directly to the independent Tribal Gaming Commission.

1. This position shall report to such commission, on a regular basis, regarding Tribal gaming operations and investigations and be headquartered at the Kenosha facility.

2. This position shall be responsible for the monitoring of the Tribe's Class III gaming operations at the Kenosha facility, including electronic games of chance variances, table games variances, compliance with internal control standards, complaint resolution and compliance with this Compact.

XIII. WITHHOLDING WISCONSIN INCOME TAX.

A. The Tribe shall withhold Wisconsin income tax from any payment of a prize or winnings from which it must also withhold federal taxes under the Internal Revenue Code or Regulations, except that the Tribe shall not be required to withhold Wisconsin income tax from payments to:

1. Enrolled members of the Tribe who reside on the Tribal Reservation; or

2. Individuals who certify to the Tribe that they are not legal residents of the State of Wisconsin, unless such individuals are subject to Wisconsin income

tax on such winnings under ch. 71, Wis. Stats., for the calendar year in which the payment is made.

B. The amount to be withheld under subsec. A. shall be determined by multiplying the amount of the payment by the greater of 6.93% (.0693), or the highest Wisconsin income tax rate applicable to individuals under s. 71.06 (1), Wis. Stats., for the calendar year in which the payment is made.

C. During the term of this Compact, the Tribe shall be registered with the Wisconsin Department of Revenue for withholding tax purposes and have a Wisconsin employer identification number. Wisconsin income tax withheld under subsec. A. shall be deposited on the same basis as taxes withheld from wages of employees are deposited by employers. Amounts withheld under subsec. A. shall be combined with amounts withheld from wages of Tribal employees and a single deposit filed for the resulting total.

XIV. PUBLIC HEALTH AND SAFETY.

A. In regard to any facilities utilized for Class III gaming under this Compact, except the Kenosha facility, the Tribe shall enact ordinances setting forth public health and safety standards for public buildings, electrical wiring, fire prevention, plumbing and sanitation that are at least as restrictive as those standards set forth in chapter 101 of the Wisconsin Statutes and the administrative rules adopted thereunder including, but not limited to chs. ILHR 14 (Fire Prevention), 16 (Electrical Wiring), 28 (Smoke Detectors), 160 (Existing Buildings), 162 (Theaters and Assembly Halls), and 81-86 (Plumbing), Wis. Adm. Code. The Tribe shall periodically update its public health and safety ordinances in accord with changes in this law and the administrative rules.

B. The Tribe shall engage a state certified inspector to conduct inspections of all facilities for Class III gaming under this Compact on a periodic basis, but not less than annually, and shall promptly repair or correct any and all instances of non-compliance with the requirements of this Section. The Tribe shall submit the inspector's report to the Department within thirty (30) days of receipt and include any corrective action to be implemented.

C. The tribal ordinance referred to in subsec. A. may exempt the Tribe's two existing gaming facilities for a period of not more than one year from the date this Compact first became binding on the parties [June 3, 1992].

D, The public health and safety standards for public buildings, electrical wiring, fire prevention, plumbing and sanitation set forth in the Wisconsin Statutes and Wisconsin Administrative Code referenced in subsec. A, including any amendments thereto, shall be directly applicable to the Kenosha facility, except that the terms of

the Compact shall provide the exclusive remedies for non-compliance with such standards.

XV. ELECTRONIC GAMES OF CHANCE.

A. Definitions. For the purposes of this Section:

1. "Credit" means the smallest unit of value that may be used to play a game on an electronic game of chance or that may be redeemed in currency.

2. "Distributor" means a person who obtains an electronic game of chance from a manufacturer and who intends to furnish it to the tribe.

3. "Manufacturer" means a person who manufactures, produces, or assembles an electronic game of chance, and who intends to furnish it to a distributor or the tribe.

4. "Electronic Game of Chance" means a microprocessor-controlled electronic device which allows a player to play games of chance, some of which are affected by skill, which device is activated by the insertion of a coin or currency, or by the use of a credit, and which awards game credits, cash, tokens, or replays, or a written statement of the player's accumulated credits, which written statements are redeemable for cash.

   a. Game play may be displayed by:

      (1) Video facsimile; or
      (2) Mechanical rotating reels whereby the software of the device predetermines the stop positions and the presence, or lack thereof, of a winning combination and pay out, if any.

   b. The term "electronic game of chance" does not include, and this Compact expressly prohibits, the operation and play of devices which utilize mechanical or optical sensors to evaluate reel positions when they come to rest after being spun for game play.

B. Testing of Electronic Games of Chance.

1. Testing and Approval of Electronic Games of Chance. No electronic game of chance may be operated by the Tribe unless:

a. The electronic game of chance is obtained from a manufacturer or distributor that holds a Certificate issued under Section VII. of this Compact to sell, lease, or distribute electronic games of chance; and

b. The electronic game of chance, or a prototype thereof, has been tested, approved or certified by a gaming test laboratory as meeting the requirements and standards of this Compact. For purposes of this Compact, a gaming test laboratory is a laboratory agreed to and designated in writing by the Department and the Tribe as competent and which holds a gaming-related contractor certificate or temporary gaming-related contractor certificate issued by the Department and is qualified to conduct scientific tests and evaluations of electronic games of chance and related equipment. The gaming test laboratory shall be an entity entirely independent of either the Department or the Tribe.

2. Application for Approval of Prototype Electronic Games of Chance. The Tribe shall provide or require that the manufacturer provide to the gaming test laboratory two copies of electronic game of chance illustrations, schematics, block diagrams, circuit analyses, technical and operation manuals, program object and source codes, hexadecimal dumps (the compiled computer program represented in base-16 format), and any other information requested by the gaming test laboratory.

3. Testing of Electronic Games of Chance. If required by the gaming test laboratory, the Tribe shall require the manufacturer to transport not more than two working models of the electronic games of chance and related equipment to a location designated by the laboratory for testing, examination, and analysis. The Tribe shall require the manufacturer to pay for any and all costs for the transportation, testing, examination, and analysis. The testing, examination, and analysis may include the entire dismantling of the electronic games of chance and related equipment and some tests may result in damage or destruction to one or more electronic components of the devices. If required by the laboratory, the Tribe must require the manufacturer to provide specialized equipment or the services of an independent technical expert to assist in the testing, examination, and analysis.

4. Report of Test Results. At the conclusion of each test, the laboratory shall provide to the Department and the Tribe a report that contains findings, conclusions, and a recommendation that the electronic game of chance and related equipment conforms or fails to conform to the hardware and software requirements of this Compact. The Department shall notify the gaming test laboratory within ten (10) days whether it is in agreement with the recommendation. The gaming test laboratory will then notify the Tribe of

the Department's decision. Disagreements that occur among the gaming test laboratory, State and Tribe shall be referred to the State/Tribal Technical Work Group for resolution. In the event that the State/Tribal Technical Work Group cannot reach an agreement the decision of the Department shall prevail. If modifications can be made which would bring the electronic game of chance or related equipment into compliance, the report may contain recommendations for such modifications.

5. Modifications of Approved Electronic Games of Chance. No modification to the assembly or operational functions of any electronic game of chance or related equipment may be made after testing and installation unless a gaming test laboratory certifies to the Department and the Tribe that the modified electronic game of chance conforms to the standards of this Compact. Any proposed modifications shall be subject to the requirements of pars. 1 through 4. above, before the modification may be implemented, and shall be reported as required under par. C.1., below.

6. Conformity to Technical Standards. The Tribe shall require the manufacturer or distributor to certify, in writing, to the Tribe and the Department that, upon installation, each electronic game of chance placed in a Tribal gaming facility:

   a. Conforms precisely to the exact specifications of the electronic game of chance prototype tested and approved by the gaming test laboratory; and

   b. Operates and plays in accordance with the technical standards prescribed in this Section.

7. Machine Identification. A non-removable plate shall be affixed to each electronic game of chance. This plate shall have written upon it the machine's serial number, manufacturer, unique identification number assigned by the Tribe for purposes of reporting under subsec. C., and the date the unique identification number was assigned.

8. Bar Coding. For the purpose of physical inventory, each electronic game of chance shall be labeled with a generic bar code as designated by the Department.

C. Tribal Reports to Department.

1. Installation and Operation. At least 10 days prior to installation of an electronic game of chance, the Tribe shall report to the Department, electronically or on a form as determined by the Department, the following information for each electronic game of chance, including, but not limited to:

   a. The type of electronic game of chance;
   b. The game's serial number;
   c. The game's manufacturer;
   d. The person from whom the game was acquired; the means by which the game was transported into the State and the name and street address of any common carrier or other person transporting the game;
   e. The certification required under par. B.6., above;
   f. The unique identification number assigned by the Tribe under par. B.7, above;
   g. The EPROM chip's identification number;
   h. The denomination of the game;
   i. The name of the game;
   j. The bar code number under par. B.8., above;
   k. The location in which the game will be placed; and
   l. The date of installation.

2. Removal from Play. Within ten (10) days of the removal of an electronic game of chance from a tribal gaming facility, the Tribe shall provide to the Department the information required by par. 1, a. through g., along with a specification of:

   a. The date on which it was removed;
   b. The game's destination;
   c. The name of the person to whom the equipment is to be transferred, including the person's street address, business and home telephone numbers; the means by which the game is to be transported and the name and street address of any common carrier or other person transporting the game.

3. On-Line System. The Tribe shall submit a monthly report identifying all electronic games of chance that have not reported information to the on-line accounting system for more than twelve (12) hours within the last thirty (30) days. The report, which shall be submitted to the Department no later than the fifteenth (15th) of each month, shall identify each machine not reporting data to the on-line system, the reason for the malfunction, its disposition, and the date the machine was again identified as being on-line.

4. Non-Reporting Electronic Games of Chance. Any electronic game of chance that has been identified as not reporting to the on-line slot accounting system shall be immediately removed from play.

5. Electronic Submission. The submissions required by this Section may be submitted electronically as a component of the State/Tribal on-line connection.

D. Hardware Requirements for Electronic Games of Chance.

1. Physical Hazard. Electrical and mechanical parts and design principles of the electronic games of chance may not subject a player to physical hazards.

2. Surge Protector. A surge protector must be installed on the line that feeds power to the electronic game of chance.

3. Battery Backup. A battery backup or an equivalent shall be installed on the electronic game of chance for the electronic meters and must be capable of maintaining the accuracy of all information required by this Compact for 180 days after power is discontinued from the machine. The backup device shall be kept within the locked microprocessor compartment.

4. On/Off Switch. An on/off switch that controls the electrical current used in the operation of a electronic game of chance and any associated equipment must be located in a place which is readily accessible within the interior of the machine.

5. Static Discharge. The operation of each electronic game of chance must not be adversely affected by static discharge or other electromagnetic interference.

6. Approved Coin and Bill Acceptors. At least one electronic coin acceptor must be installed in or on each electronic game of chance. The devices may also contain bill acceptors for denominations determined by the Tribe. Prior to operation, all models of coin and bill acceptors installed must have been tested and approved in writing by the gaming test laboratory as provided in subsec. B.

7. Cabinet Security.

a. The cabinet or interior area of the electronic game of chance shall be locked and not readily accessible.

b. The electronic game of chance shall have a single printing mechanism which must be capable of printing an original audit ticket and retaining an exact legible copy, either within the game or in an on-line electronic game management system approved by the independent gaming test laboratory, that provides permanent sequential tracking, and which permits monitoring of error conditions on a printed medium for future use, and which records the following information:

(1) Amount deposited in the machine through coin collectors and bill acceptors;
(2) Number of credits paid;
(3) Value of the credits paid in dollars and cents displayed in numeric form;
(4) Amount of net revenue to the machine;
(5) Time of day in twenty-four hour format showing hours and minutes;
(6) Date;
(7) Machine serial number or unique asset number assigned by the Tribe;
(8) Terminal number;
(9) Number of times the microprocessor compartment has been opened;
(10) Number of times the cash compartment has been opened; and
(11) The number of times the cabinet has been opened.

c. Electronic games of chance utilizing coin drop hoppers are permitted, provided they are monitored by an on-line electronic game management/reporting system which has been approved by the independent gaming test laboratory, or by an equivalent technology, accepted in writing by the Department and approved by the independent gaming testing laboratory.

d. The term "error conditions" as used in this subdivision includes:

(1) Cabinet door open and cash compartment door open;
(2) Coin-in tilt and reverse coin-in tilt; and
(3) Hopper empty, hopper jam, or hopper runaway/malfunction.

e. Upon notice by the Department, the Tribe shall implement the following procedures. The Tribe shall establish and partially fund an on-line connection between the Kenosha facility's slot accounting system and the Department's office. Establishment of the on-line

connection shall enable the Department to access the slot accounting system in real time, access data regarding electronic games of chance maintained by the Kenosha facility's on-line system, and the installed connection shall pose no security risk to the Tribe. The Kenosha facility's on-line system shall include an automated Blackjack accounting component.

8. Repairs and Service. An authorized agent or employee of the Tribe may open the gaming cabinet to effect repairs and service, but shall do so only in the presence of another Tribal agent or employee. Each entry into the machine shall be recorded by the on-line slot accounting system and manually on a maintenance card within the machine. This recording shall include the identification of the individual entering the machine, the date and time of entry and the reason for entry. This information shall also be made available to the Department electronically.

9. Microprocessor Compartment. The compartment containing the microprocessor-controlled device within the cabinet of the electronic game of chance must be locked and sealed, and unlocked by a different key than the key which unlocks the cabinet or cash compartment. The compartment may only be opened in the presence of a tribal official. The key to the microprocessor compartment shall be kept by the Tribe in a secure place. Each opening of the microprocessor compartment shall be recorded by the on-line slot accounting system.

10. Secure Electronic Components.

a. Logic Boards and software Erasable Programmable Read Only Memory (EPROM) chips and other logic control components shall be located in a separate compartment within the electronic game of chance and that compartment shall be sealed and locked with a different key or combination than that used for the main cabinet door, and cash compartment.

b. Upon installation, the Tribe shall affix or cause to be affixed to the EPROM chip(s) of each electronic game of chance a strip of security tape, capable of evidencing the removal of an EPROM chip if the EPROM chip is removed from the circuit board. The security tape shall be secured and available only to the authorized personnel of the Tribe. The Tribe shall maintain accurate and complete records of the identification number of each EPROM chip installed in each electronic game of chance.

11. Secure Cash Compartment. The coins and currency compartment shall be locked separately from the main cabinet area, and secured with a different key or combination than used for the main cabinet door, except that a separate cash compartment shall not be required for coins necessary to pay prizes in a machine which pays prizes through a drop hopper as permitted in this Section. Cash compartment keys must be kept in a secure location. Except as provided in this Section, the compartment in which the inserted coins and bills are deposited shall be locked at all times. An employee or official of the Tribe may open the cash compartment in the gaming cabinet for the purpose of collecting the accumulated cash. The amount of accumulated cash shall be recorded. Each opening of the cash compartment shall be recorded by the on-line slot accounting system.

12. Hardware Switches Prohibited. No hardware switches may be installed on an electronic game of chance or on any associated equipment which may alter the pay tables or payout percentages in the operation of the gaming device. Hardware switches may be installed to control the machine's sound.

13. Printing of Written Statement of Credits. Each electronic game of chance which awards credits or replays but not coins or tokens shall allow the player to request a written statement upon completing play. Upon printing a written statement, the printer must retain an exact, legible copy of the written statement within the machine.

14. Maximum Wagers. An electronic game of chance shall not allow any player to wager more than $5 during a game. In the event the Tribe can demonstrate that a Competitive Facility (as defined in Section XXXVIII) offers wagers on games conducted by the Tribe with wagering limits that place the Tribe at a material competitive disadvantage, the Tribe may petition the Secretary of the Department of Administration to approve limits that allow the Tribe to effectively compete in the relevant markets. Such approval shall not be unreasonably withheld.

15. Minimum Age Warning. The minimum legal age requirement in subsec. V.A. of this Compact for a person to play an electronic game of chance must be displayed on the machine face under glass or on an unremovable plate on the front exterior of the game.

16. No Credit Cards Permitted. No electronic game of chance may be equipped with a device which permits the player to use a credit card rather than currency or coin to activate the game.

17. Operation as Part of a Network. The hardware requirements of this subsection shall not be construed to prevent the operation of the electronic game of chance as part of a network with an aggregate prize or prizes; provided:

a. An electronic game of chance capable of bi-directional communication with external associated equipment must utilize communication protocol which insures that erroneous data or signals will not adversely affect the operation of the game. The operation of the local network must be approved by the independent gaming test laboratory;

b. Where the network links the Tribe's electronic games of chance to tribal games of chance on other Indian reservations or to other electronic games of chance in facilities licensed by the applicable state gaming regulatory authority, each Tribe participating in the network shall have in force a Class III gaming Compact authorizing such gaming as part of a network and all segments of the network shall utilize security standards agreed between the Tribe and the Department which are at least as restrictive as those used by the Wisconsin Lottery for its on-line games.

E. Software Requirements for Electronic Games of Chance.

1. Randomness Testing. Each electronic game of chance must have a true random number generator that will determine the occurrence of a specific card, symbol, number, or stop position to be displayed on the electronic screen or by the mechanical rotating reels. A selection process will be considered random if it meets all of the following requirements:

a. Chi-Square Analysis. Each card, symbol, number, or stop position which is wholly or partially determinative of the outcome of a game satisfies the 99 percent confidence limit using the standard chi-square analysis.

b. Runs Test. Each card, symbol, number, or stop position does not as a significant statistic produce predictable patterns of game elements or occurrences. Each card, symbol, number, or stop position will be considered random if it meets the 99 percent confidence level with regard to the "runs test" or any generally accepted pattern testing statistic.

c. Correlation Analysis. Each pair of cards, symbols, numbers, or stop positions is independently chosen without regard to any other card, symbol, number or stop position, drawn within that game play. Each

pair of cards, symbols, numbers, or stop positions is considered random if it meets the 99 percent confidence level using standard correlation analysis

d. Serial Correlation Analysis. Each card, symbol, number, or stop position is independently chosen without reference to the same card, number, or stop position in the previous game. Each card, number, or stop position is considered random if it meets the 99 percent confidence level using standard serial correlation analysis.

e. Live Game Correlation. Electronic games of chance that are representative of live gambling games must fairly and accurately depict the play of the live game.

2. Software Requirements for Percentage Payout. Each electronic game of chance must meet the following maximum and minimum theoretical percentage payout during the expected lifetime of the game:

a. Electronic games that are not affected by player skill shall pay out a minimum of 80 percent and no more than 100.0 percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory; and

b. Electronic games that are affected by player skill, such as electronic draw poker and blackjack, shall pay out a minimum of 83 percent and no more than 100.0 percent of the amount wagered. This standard is met when using a method of play that will provide the greatest return to the player over a period of continuous play.

3. Minimum Probability Standard for Maximum Payout. Each electronic game of chance must have a probability of obtaining the maximum payout which is greater than 1 in 17,000,000 for each play.

4. Software Requirements for Continuation of Game After Malfunction. Each game must be capable of continuing the current game with all current game features after a game malfunction is cleared. This provision does not apply if a game is rendered totally inoperable; however, the current wager and all player credits prior to the malfunction must be returned to the player.

5. Software Requirements for Play Transaction Records. Each game must maintain electronic accounting meters at all times, regardless of whether the machine is being supplied with power. Each meter must be capable of maintaining totals no less than six digits in length for the information required in subdivs a. through d., inclusive. The electronic meters must record the following information:

a. Total number of coins inserted. The meter must count the total number of coins that are inserted by the player or the coin equivalent if a bill acceptor is being used;
b. Number of credits wagered;
c. Number of credits won;
d. Credits paid out by a printed written statement;
e. Number of times the logic area was accessed;
f. Number of times the cash compartment was accessed;
g. Number of coins or credits wagered in the current game;
h. Number of coins or credits won in the last complete, valid game, commonly referred to as the credit meter;
i. Number of cumulative credits representing money inserted by a player and credits for games won but not collected, commonly referred to as the credit meter;
j. Number of times the machine door was accessed; and
k. Number of coins diverted to the drop chute.

6. No Automatic Clearing of Accounting Meters. No game may have a mechanism by which an error will cause the electronic accounting meters to automatically clear. All meter readings must be recorded and dated in the presence of a tribal official both before and after the electronic accounting meter is cleared.

7. Display of information. The display information required in par. 8. shall be kept under glass or another transparent substance and at no time may stickers or other removable devices be placed on the machine face.

8. Rules Display. The software shall display:

a. The rules of the game prior to each game being played;
b. The maximum and minimum wagers, the amount of credits which may be won for each winning hand or combination of numbers or symbols; and
c. The credits the player has accumulated; provided, however, in the case of an electronic game of chance with a mechanical display, the information required by subdivs. a. and b. shall be permanently affixed on the game in a location which is conspicuous to the player during play.

F. Non-Complying Games.

1. The following are declared to be non-complying games:

a. All electronic, electro-mechanical and mechanical games of chance to which the Department of Justice or the Department have been denied access for inspection purposes;

b. All electronic games of chance operated in violation of this Compact;

c. All electronic, electro-mechanical, or mechanical games not reported as required under subsec. C.;

d. The Department may immediately remove from play games operating with EPROMs, bill validators, accounting systems and software programs not currently approved for use in Wisconsin by a certificated gaming test laboratory.

e. The Department may take immediate possession of EPROMs, components of electronic games of chance or any item that evidences the non-compliance of the games or systems with the provisions of the Compact;

f. The modification of game programs (EPROMs) through a download of software from the on-line system to EPROMs located on the microprocessor board within each electronic game of chance is prohibited. This specifically includes a prohibition of the installation of EPROMs which are designed to allow on-line software modification, commonly referred to as "Flash" EPROMs. This Section is not intended to preclude the use of programmable "Flash" EPROMs for the communication software utilized to establish and maintain the on-line connection between the electronic games of chance and the slot accounting system as required by this Compact;

g. Modifications and changes to approved electronic games of chance or accounting systems which materially alter the play, appearance or operation of the game or related equipment shall be reviewed by a certificated gaming test laboratory and shall be mutually agreed upon by the Department and the Tribe prior to implementation; and

2. Demand for Remedies for Non-Complying Games. Electronic games of chance believed to be non-complying shall be so designated, in writing, by

the Department. Within 5 days of receipt of such written designation, the Tribe shall either:

a. Accept the finding of non-compliance, remove the games from play, and take appropriate action to ensure that the Tribe, the manufacturer, distributor or other responsible person cures the problem; or

b. Contest the finding of non-compliance by so notifying the Department in writing, and arrange for the inspection of the contested equipment, or single example thereof, by an independent gaming test laboratory and the Department as provided in subsec. B. within three days of the receipt of the finding of non-compliance. If the independent laboratory finds that the game or related equipment is non-complying, the non-complying game and related equipment shall be permanently removed from play unless modified to meet the requirements of this Compact. Games and related equipment removed from play under this paragraph may be returned to play only after tested, approved or certified as provided under subsec. B. and reported to the Department as provided under subsec. C.

G. Game Locations. Electronic games of chance may be located on tribally-owned land or land held in trust by the United States on behalf of the Tribe, but only on such lands within the exterior boundaries of the Tribal Reservation; except that, such games may be located on tribally-owned land or land held in trust by the United States on behalf of the Tribe outside of the exterior boundaries of the Tribal Reservation, but only if the Governor consents in writing. Tribal lands acquired after October 17, 1988 shall also be subject to Section 20 of the Act.

H. Specific Game Locations. The Tribe shall limit use of electronic games of chance to the following Tribal gaming facilities: (1) Menominee Nation Casino; and (2) Menominee Crystal Palace; provided, however, that the Kenosha facility may be substituted for the Menominee Crystal Palace game facility.

XVI. BLACKJACK, REGULATION AND PLAY OF.

A. Definitions. The following terms, when used in this Section, shall have the following meanings unless the context clearly indicates otherwise:

1. "Blackjack" or "Twenty-one (21)" (hereinafter "Blackjack") means a card game in which each player opposes the dealer and the dealer opposes each player on behalf of the Tribe; it is played with a single deck or multiple decks of cards from which each player and a dealer are dealt two cards and

may draw additional cards; wherein the object is to accumulate a total of twenty-one points or a total closer to twenty-one points than that of the opposing hand, without exceeding twenty-one points.

2. "A Blackjack" means the combination of an Ace and any card having a point value of ten dealt as the initial two cards to a player or a dealer, except that a Blackjack is not the combination of an Ace and a ten value card drawn after splitting a pair.

3. "Chip" means a non-metal or partly metal representative of value, redeemable for cash, and issued and sold by a gaming entity, for use in gaming other than in electronic gaming devices.

4. "Circle" means one of several areas of the Blackjack table marked-off in front of each player into which the players' hands are dealt and from which their hands are played.

5. "Dealer" means the person responsible for dealing the cards, taking wagers, and paying winnings.

6. "Double Down" means a wager made by a player who doubles the amount of his or her original wager after the first two cards of the player's hand have been dealt or who places such an additional wager on any first two cards of any split pair; provided however, that a player making such a wager may only draw one card.

7. "Hand" means either one game in a series, one deal of the cards, or the cards played by the dealer or a player.

8. "Hard Total" means the total point count of a hand which contains no Aces or which contains Aces that are each counted as one point in value.

9. "Hole" means one of several areas of the Blackjack table marked-off in front of each player into which the players' chips are placed.

10. "Insurance" means the election of a player to wager that the dealer does have a Blackjack when the dealer has one card down and one card showing which is an Ace.

11. "Payout" means the winnings earned on a wager.

12. "Player" means one person to whom a hand has been dealt.

13. "Propositional Wager" or Proposition Bet" means any wager which is not specifically permitted under this Section.

14. "Push" or "Standoff" (hereafter "push") means the circumstance in which a player and dealer have the same point total of twenty-one or less, resulting in a tie and cancellation of the player's wager; except that a push is not the circumstance in which both a player and the dealer have 21 points but only one of these opponents has a Blackjack.

15. "Shoe" means the container from which one or more decks of cards are dealt that is designed to prevent dealer sleights of hand.

16. "Soft Total" means the total point value of a hand containing an Ace when the Ace is counted as eleven points in value.

17. "Split" means the election of a player who has been dealt a pair to split the single hand into two separate hands and concomitantly make a wager on the separately formed second hand which is equal in value to the original wager.

18. "Surrender" means the election of a player to discontinue play on that player's hand for that round by giving over to the Tribe one half of player's wager after the first two cards are dealt to the player and the player's point total is announced; except that where the dealer has Blackjack with an Ace showing, no surrender is permitted.

19. "Wager" means a sum of money, represented in Blackjack by a chip, that is risked.

B. Game Locations and Times.

1. Blackjack games authorized and operated under this Section may be located at the facilities at which electronic games of chance may be operated under Section XV.H.

2. Blackjack may not be conducted at any location for more than 18 hours in any day; provided, however, that Blackjack may be conducted 24 hours a day at the Kenosha facility.

C. Game Regulations. The game of Blackjack shall be played as provided in these regulations:

1. Regulation of Players, Nonplayers, and Consultations Between Them.

a. No more than seven players shall be allowed to play Blackjack at any single Blackjack table for any given hand;
b. No more than seven persons, exclusive of casino personnel, shall be seated at any single Blackjack table for any given hand;
c. At the discretion of the Tribe, the number of nonplayers in proximity to the Blackjack tables may be limited at any time during the play of Blackjack provided that one nonplayer shall be permitted to remain for each player who requests such permission;
d. Players may consult with nonplayers before making an election pursuant to these regulations; provided however, the Tribe shall respond only to an election communicated by a player.

2. Cards, Number of Decks, Value of Cards.

a. Blackjack shall be played with one or more 52-card decks and one colored cutting card. Before being put into play, the cards shall arrive at the Blackjack table unused and still sealed within the cellophane wrapping originally applied by the card manufacturer.

b. The Value of the Cards contained in each deck shall be as follows:

(1) Any card from the 2 to the 10 shall have its face value;
(2) Any Jack, Queen or King shall have a value of ten; and
(3) An Ace shall have a value of eleven unless that would give a player or the dealer a score in excess of twenty-one, in which case, it shall have a value of one.

3. Wagers.

a. Only players may wager in the game of Blackjack.
b. No more than seven players shall be allowed to make wagers at any single gaming table for any given hand.
c. Prior to the first card being dealt for each round of play, each player at the game of Blackjack shall make a wager against the dealer.
d. A player's wager shall win if:

(1) The score of the player is 21 or less and the score of the dealer is in excess of 21;
(2) The score of the player exceeds that of the dealer without either opponent exceeding 21; or

(3) Both the player and dealer have achieved a score of 21; however, the player has a Blackjack and the dealer does not.

e. A player's wager shall lose if:

(1) No matter what the score of the dealer, the score of the player is in excess of 21;
(2) The score of the dealer exceeds that of the player without either opponent exceeding 21; or
(3) Both the dealer and player have achieved a score of 21; however, the dealer has a Blackjack and the player does not.

f. A player's wager shall be cancelled in the event of a push.

g. Except as otherwise provided in these regulations, no wager shall be made, increased or withdrawn after the first card of the respective round has been dealt.

h. Wagers shall be represented by gaming chips and by no other means including, but not limited to, United States and foreign currencies, promissory notes, and securities.

i. A player shall make a wager by placing gaming chips in the appropriate hole, or marked area.

j. The maximum wager on any hand shall be $200 before double-downs or splits Minimum and maximum wagers shall be conspicuously posted at each table. In the event the Tribe can demonstrate that a Competitive Facility (as defined in Section XXXVIII) offers wagers on games conducted by the Tribe with wagering limits that place the Tribe at a material competitive disadvantage, the Tribe may petition the Secretary of the Department of Administration to approve limits that allow the Tribe to effectively compete in the relevant markets. Such approval shall not be unreasonably withheld.

k. Except for a Blackjack, any winning wagers within the wager limit set in subdiv. j., and made in accordance with this paragraph shall be paid at odds of 1 to 1. At the Tribe's discretion, a Blackjack may be paid at minimum odds of 3 to 2, and maximum odds of 2 to 1. The odds for the payment of a Blackjack shall be conspicuously posted at each gaming table.

l. The dealer shall announce any Blackjack obtained by a player or the dealer and pay off or collect as provided in these regulations either immediately or at the hand's conclusion.

m. Once the first card of any hand has been dealt by the dealer, no player shall handle, remove, or add any chips, or otherwise alter any wager, unless the floor supervisor or pit boss approves of such alteration in accordance with these regulations.

n. Once a wager on insurance, wager to double down, or wager to split pairs has been made and confirmed by the dealer, no player shall handle, remove, or add any chips, or otherwise alter any wager, unless the floor supervisor or pit boss approves of such alteration in accordance with these regulations.

o. The Tribe may preclude a person who has not made a wager on the first round of play from entering the game on a subsequent round of play prior to a reshuffle of the cards occurring. Any person permitted by the Tribe to enter the game after the first round of cards has been dealt may be limited by the Tribe to a wager of the minimum limit posted at the table until the cards are reshuffled and a new deal is commenced.

p. Any player who, after placing a wager on any given round of play, declines to place a wager on any subsequent round of play may be precluded by the Tribe from placing any further wagers until the dealer's shoe of cards is completed and a new shoe is commenced.

q. In the event a player is precluded from play under subdivs. o. or p., above, the Tribe may at its discretion request that the player leave the Blackjack table, provided that the player is allowed to join or rejoin that or any other game subject only to the conditions imposed on all players by the game regulations described in this Compact.

r. Propositional wagers in the game of Blackjack are prohibited.

4. Opening of Table for Gaming.

a. After receiving the one or more decks of cards at the Blackjack table, the dealer shall sort and inspect the cards and the floor person assigned to the table shall verify the inspection.

b. After the cards are inspected, the cards shall be spread out face upwards on the table for visual inspection by the first player or players to arrive at the table. The cards shall be spread out in a

horizontal fan shaped by columns by deck according to suit and in sequence.

5. Shuffle and Cut of the Cards.

a. Immediately prior to commencement of play and after any round as may be determined by the Tribe, the dealer shall shuffle the cards so that they are randomly intermixed. The dealer may use an autoshuffler to meet the requirements of this subdiv. a.

b. After the cards have been shuffled, the dealer shall offer the stacks of cards with backs facing away from the dealer, to the players to be cut.

c. The player designated by subdiv. d., below, or the dealer as designated by subdiv. e., below, shall cut the cards by placing the cutting card in the stack at least 10 cards in from either end.

d. The player to cut the cards shall be:

(1) The first player to the table if the game is just beginning;
(2) The player on whose circle the cutting card appeared during the last round of play;
(3) The player at the farthest point to the right of the dealer if the cutting card appeared on the dealer's hand during the last round of play; or
(4) The player at the farthest point to the right of the dealer if the reshuffle was initiated at the discretion of the Tribe.

e. If the player designated in subdiv. d., above, refuses the cut, the cards shall be offered to each other player moving clockwise around the table until a player accepts the cut. If no player accepts the cut, the dealer shall cut the cards.

6. Dealing from the Hands. Dealing from one or more decks of cards held in the hands of the dealer is prohibited in the game of Blackjack by this Compact.

7. Dealing from a Shoe.

a. All cards used to game at Blackjack shall be dealt from a multideck dealing shoe specifically designed for such purpose and located on the Blackjack table to the left of the dealer.

b. Each dealer shall remove the cards from the shoe with the left hand, and then with the right hand, place the cards on the appropriate area of the layout, except that the dealer has the option to deal hit cards to the first two circles with the left hand.

c. After each full set of cards is placed in the shoe, the dealer shall remove the first card therefrom face downwards and place it on the discard rack which shall be located on the table immediately to the right of the dealer. Each new dealer who comes to the table shall follow the same procedures as described in this subdivision before the new dealer deals any new cards to the players. The first card which has been placed face down in the discharge rack, otherwise known as the "burn card," shall be disclosed if requested by a player.

d. At the commencement of each round of play, the dealer shall, starting on the dealer's left and continuing around the table to the right, deal the cards in the following order:

(1) One card to each of the players' circles;
(2) One card face down to the dealer;
(3) A second card to each of the players' circles; and
(4) A second card face down to the dealer, and then turning the dealer's first card face up.

e. After two cards have been dealt to each player and the dealer, the dealer shall, beginning on the dealer's left, indicate each player's turn to act. Such player shall indicate to the dealer whether he wishes to stand, draw, or make any other election as permitted by these regulations.

f. A viewing window "peeker" may be used by the dealer.

g. As each player makes an election, the dealer shall deal face upwards whatever additional cards are necessary to effectuate such election consistent with these regulations.

h. At the conclusion of a round of play, all cards still remaining on the layout shall be picked up by the dealer in order and in such a way that they can be readily arranged to indicate each player's hand in case of questions or dispute. The dealer shall pick up the cards beginning with those of the player to the far right of the dealer and moving counter-clockwise around the table. After all the players' cards have been collected the dealer shall pick up his cards and place them in the discard rack on top of the players' cards.

i. Whenever the cutting card is reached in the deal of the cards, the dealer shall continue dealing the cards until that round of play is completed after which he shall reshuffle the cards. If at the beginning of a new round, the first card to be dealt is the cutting card, the dealing stops and the dealer shuffles the cards.

j. At no time shall a player or nonplayer be allowed to handle, alter or remove any cards used to game at Blackjack except as explicitly permitted in this Section.

k. Each player at the table shall be responsible for correctly computing the point counts of his/her hand, and no player shall rely on any point counts announced by the dealer.

l. Whenever all players leave a table, the dealer must repeat the procedures contained in paragraphs 4 and 5, above.

8. Payment of a Blackjack.

a. If the first face up card dealt to the dealer is 2,3,4,5,6,7,8, or 9 and a player has Blackjack, the dealer shall announce and pay the winner at odds in play at that table, either immediately or at the hand's conclusion.

b. If the first face up card dealt to the dealer is an Ace, King, Queen, Jack or Ten and a player has a Blackjack, the dealer shall announce the Blackjack but shall make no payment nor remove any cards until all other cards are dealt to the players and the dealer receives a second card. If, in such circumstances, the dealer's second card does not give the dealer a Blackjack, the player having a Blackjack shall be paid at odds in play at that table. If, however, the dealer's second card gives him a Blackjack, the wager of the player having a Blackjack shall constitute a tie or a push.

9. Surrender. The Tribe may allow all players to surrender or may prohibit them from surrendering. The game regulation regarding surrender shall be conspicuously posted at the location where blackjack is played.

10. Insurance. The Tribe may allow all players to make insurance wagers, or may prohibit them from so wagering. The game regulation regarding insurance shall be conspicuously posted at the location where Blackjack is played.

11. Doubling Down. The Tribe may allow all players to double down, or may prohibit them from doubling down. The game regulation regarding doubling

down shall be conspicuously posted at the location where Blackjack is played.

12. Splitting Pairs. The Tribe may allow all players to split, or may prohibit them from splitting. The game regulation regarding splitting pairs shall be conspicuously posted at the location where Blackjack is being played.

13. Push. Other provisions of this Section notwithstanding, the Tribe may deem to be a push the circumstance in which the player has a simple 21 and the dealer a Blackjack. The game regulation regarding a push shall be conspicuously posted at the location where Blackjack is played.

14. "Double Pitch" variant. The Tribe may offer this variant of Blackjack as provided below:

a. Tables at which this variant is played shall be conspicuously posted "Double Pitch."
b. This variant may be conducted at not more than one-third of the Blackjack tables in a gaming facility.
c. Par. C.6. notwithstanding, dealing from the hands shall be permitted using one, but not more than two, complete decks of cards.
d. Subdiv. C.7.d. notwithstanding, this variant may be conducted with one or both of the players' cards dealt face down.
e. Subdiv. C.7.i. notwithstanding, a player may be permitted to hold cards dealt to that player.
f. Each table at which this variant is being conducted shall be subject to the continuous surveillance prescribed in par. D.2. at all times during play.

15. Drawing of Additional Cards by Players and Dealers.

a. A player may elect to draw additional cards whenever that player's point count total is less than 21 except that:

(1) A player having a Blackjack or a hard total of 21 may not draw additional cards;
(2) A player electing to double down may draw up to the posted limit; and
(3) A player splitting Aces shall only have one card dealt to each Ace and may not elect to receive additional cards.

b. Except as provided in subdiv. c., below, the dealer shall draw additional cards when the hard or soft total of the dealer's hand is 16 or less. The dealer shall draw no additional cards if the hard or

soft total of the dealer's hand totals 17 or greater. The dealer's draw limits shall be clearly posted on the layout.

c. A dealer shall draw no additional cards, regardless of the point count, if all players have made their elections on their respective hands and the point count of the dealer's hand will have no effect on the outcome of the round of play.

16. A Player Wagering on More Than One Circle. The Tribe may permit a player to wager on more than one circle at the Blackjack table provided, however, that the Tribe shall have the authority and discretion to prohibit this during hours when there are insufficient seats at the location where Blackjack is played to accommodate patron demand.

17. Distribution of Blackjack Tips. All tip wagers given to a dealer and all other tips shall be paid in chips, deposited in a locking tip box in the dealer's pit area, pooled with all other tips and tip wagers accumulated by all other dealers, and divided not less frequently than weekly between dealers upon a formula established by the Tribe. Cash tipping shall be prohibited.

18. Blackjack Tournament. The Tribe may allow the play of Blackjack tournaments where, in addition to the wager, players may win other prizes as provided for in the regulations of that particular tournament. Any such Blackjack tournament must otherwise be played as provided in this Section.

19. Availability of Blackjack Rule. The regulations of Blackjack or of a Blackjack tournament must be made readily available in writing to players or potential players on request.

20. House Count and Inspection of Cards Upon Closing.

a. Upon closing of the location where Blackjack is played all cards utilized in games of Blackjack shall be re-grouped into complete 52-card decks.

b. A dealer who dealt cards from a shoe may not regroup the cards from that shoe.

c. Any irregularities discovered as a result of regrouping cards, such as missing or marked cards, shall be reported to the casino manager first and then to security personnel for investigation and resolution.

D. Staffing and Surveillance Requirements. The following staffing and surveillance requirements shall apply to the game of Blackjack:

1. At all times during the conduct of Blackjack games the following staff must be present:

   a. At least one cashier;
   b. One dealer per table; and
   c. At least one pit boss or floor person for each five tables or fraction thereof.

2. At all times during the conduct of Blackjack games the following surveillance shall be required:

   a. Video cameras capable of providing pan, tilt and zoom surveillance of the tables at which Blackjack is being played;
   b. Domes that completely enclose each video camera required under this paragraph and conceal such cameras' actions yet accommodate clear, unobstructed camera views;
   c. At least one employee or management official monitoring the video surveillance feed on closed circuit video monitors; and
   d. Video recordings of video surveillance camera feed.

3. Video recordings of video surveillance feed gathered under par. 2., above, shall be preserved and stored for a period of 30 days and shall not be erased, recorded-over, nor otherwise altered during that time.

4. Upon request by the Department, the Tribe shall make available for review and copy any surveillance recordings related to the conduct of Blackjack or any other Class III gaming being conducted at the gaming facility. Any requests for surveillance recordings by the Department during an on-site inspection shall be provided within three (3) hours of the verbal or written request. Any other requests for surveillance recordings shall be provided within ten (10) days of the verbal or written request. To provide for inspection and copying of surveillance recordings, the Department may request that such tapes be delivered to the agency's office. All expenses related to the preparation, submission and delivery of the recordings shall be incurred by the Tribe. Any such recordings submitted to the Department shall be deemed confidential and not subject to public inspection.

E. Procedures for Non-Compliance. Should the Department identify issues of non-compliance, inconsistencies or the integrity of gaming is being threatened or compromised, the Department shall order the table removed from play until corrective action can be implemented and approved by the Department.

XVII. PULL-TABS OR BREAK-OPEN TICKETS.

A. Standards. Pull-tab or break-open ticket games, when conducted as Class III gaming pursuant to this Compact, shall be conducted in accord with the most recent published standards of the North American Gaming Regulators Association.

B. Game Locations. Games authorized and operated under this Section shall be located on tribally-owned land or land held in trust by the United States on behalf of the Tribe, but only on such lands within the exterior boundaries of the tribal reservation, except that such games may be located on tribally-owned land or land held in trust by the United States on behalf of the Tribe outside of the exterior boundaries of the tribal reservation, but only if the Governor consents in writing. Tribal lands acquired after October 17, 1988 shall also be subject to Section 20 of the Act.

C. Licensing. In accord with the Tribal Gaming Ordinance approved pursuant to Section 11(b) of the Act, the Tribe may license enrolled members of the Tribe to sell Tribally issued tickets on land owned in fee by the member or on land held in trust by the United States for the benefit of the Tribe or an enrolled member of the Tribe, but only on such lands within the exterior boundaries of the tribal reservation.

XVIII. MENOMINEE LOTTO.

A. Definition. For the purpose of this Section, "Menominee Lotto" means a game in which a player, for consideration, enters a play (set of X numbers) selected by the player from a field of Z numbers, in a drawing in which the winning set of Y numbers are determined. Prizes are awarded, in accord with the published game rules, based on the extent to which the numbers entered by the player match those determined in the drawing. The set of numbers entered by a player in a drawing must be the same size as those entered by every other player in the drawing. In this game, X shall be less than or equal to 11; Y shall be less than or equal to 11, and Z shall be less than 60.

B. Game administration. The requirements for game administration shall be agreed in writing between the Tribe and the Department. The requirements shall be comparable to general practice within the lottery industry. The requirements shall include provisions for the following:

1. Integrity and randomness of drawings, including standards for and certification of mechanical and computerized drawing equipment.

2. Balancing of player transactions and sales.

3. Drawing security.

C. Game Features.

1. Subscription sales. Subscription sale of tickets, meaning sale of entries to a drawing or series of drawings by mail or through telecommunications, are prohibited.

2. Advance sales. Advance ticket sales, meaning sale of entries to a series drawings, are prohibited, except that advance sale of entries to a current and one or more subsequent drawings are permitted if all drawings included in the advance sale occur within a single, continuous six-hour period.

3. Prize payment. Winning tickets must be redeemed for prize payment within 24 hours after the drawing to which the ticket corresponds. The holder of a winning ticket must redeem the prize in person. Winning tickets cannot be redeemed, nor prizes paid, by any other means.

4. Unclaimed prizes. Winning tickets which are not redeemed within 24 hours after the drawing to which the ticket corresponds are expired and may not be redeemed for a prize. Unclaimed prizes shall, at the discretion of the Tribal Gaming Commission, either be added to the game prize pool or contributed to a charity. Any other disposition must be approved by the Department.

5. Game information. Game rules shall be conspicuously posted. The notice shall also advise that the following information about the game is available in writing upon request:

   a. The number and value of prizes;
   b. The odds of winning each prize;
   c. The portion of the ticket price allocated to the prize pools.

6. Drawings. Drawings shall be open to the public and shall be recorded on video and audio tape.

D. Game locations. Tickets to games authorized and operated under this Section may be sold, and drawings held, only at locations on tribally-owned land or land held in trust by the United States on behalf of the Tribe, but only on such lands within the exterior boundaries of the tribal reservation; except that, such games may be located on tribally-owned land or land held in trust by the United States on behalf of the Tribe outside of the exterior boundaries of the tribal reservation, but only if the Governor consents in writing. Tribal lands acquired after October 17, 1988 shall also be subject to Section 20 of the Act.

XIX. ALLOCATION OF JURISDICTION.

A. Civil Jurisdiction. This Compact does not change the allocation of civil jurisdiction among federal, state, and tribal courts, unless specifically provided otherwise in this Compact.

B. Criminal jurisdiction.

1. The State, except as otherwise provided herein, shall have jurisdiction to prosecute such criminal violations of its gambling laws, including amendments thereto, as may occur on tribal lands, but only with respect to non-Indians. Consent of the Attorney General of Wisconsin shall be a condition precedent to commencement of any prosecution. This provision shall not survive the term and termination of this Compact.

2. The State shall not initiate criminal prosecution against any individual authorized by the Tribe to, on behalf of the Tribe, engage in Class III activities authorized by this Compact or against any individual authorized by the Tribe to engage in Class I or Class II activities under the Act. Any dispute as to the authority of the Tribe relating to such authorization shall be resolved through the Dispute Resolution procedures set forth within this Compact.

3. The Tribe shall have jurisdiction to prosecute violations of its Gaming Code against all individuals subject thereto.

4. Except as specifically set forth in this subsection, this Compact does not change the allocation of criminal jurisdiction among federal, state and tribal authorities.

5. The parties acknowledge the existence of the memorandum of understanding between the Tribe and the United States Attorney for the Eastern District of Wisconsin relating to the exercise of criminal jurisdiction by the United States and the Tribe.

XX. LIABILITY FOR DAMAGE TO PERSONS AND PROPERTY.

A. During the term of this Compact, the Tribe shall maintain public liability insurance with limits of not less than $250,000 for any one person and $4,000,000 for any one occurrence for personal injury, and $2,000,000 for any one occurrence for property damage.

B. The Tribe's insurance policy shall include an endorsement providing that the insurer may not invoke tribal sovereign immunity up to the limits of the policy required under subsec. A.

C. The Tribe shall indemnify, defend and hold harmless the State, its officers, directors, employees and agents from and against any claims, damages, losses or expenses asserted against or suffered or incurred by the State or its officers, directors, employees and agents based upon or arising out of any bodily injury or property damage resulting or claimed to result in whole or in part from any act or omission of the Tribe relating to the inspection of any gaming or gaming related facilities, or any rectification thereof, pursuant to this Compact or tribal ordinances regarding public health, safety and welfare.

XXI. ENFORCEMENT.

A. The Department and the Department of Justice shall have the right to monitor the Tribe's Class III gaming to ensure Tribal compliance with the provisions of this Compact. Authorized agents of the Department and the Division of Criminal Investigation of the Department of Justice shall, upon the presentation of appropriate identification, have the right to gain immediate and unrestricted access with or without notice, and without warrant, to all facilities, public and non-public, used for the operation or conduct of Class III gaming or the storage of equipment and records related thereto, and may inspect all premises, equipment, records, on-line slot accounting system reports, documents, information, copies of surveillance tapes recorded and maintained as required by Section XVI.D. of this Compact and other items related to the operation or conduct of Class III gaming in order to verify compliance with the provisions of this Compact. Department staff shall receive all documents requested while on-site within three (3) hours of the verbal or written request. Notice of Inspections pursuant to this Section shall be provided to the individual that has been appointed to be responsible for the operations of the facility at which Class III gaming is being conducted at the time the inspection is to commence. During any inspection pursuant to this Compact, any individuals employed, under contract, or having any responsibilities associated with the operation or conduct of Class III gaming shall be made available for interview upon request. Such interviews shall not be conducted in a manner which disrupts normal business operations.

B. If either party believes that the other party has, in respect to the subject matter of this Compact, failed to prosecute any offender under its criminal laws or code, it may invoke the Dispute Resolution procedures in Section XXIII.

C. If any party to this Compact has reason to believe that the other party is not complying with the provisions of this Compact, it may invoke the Dispute Resolution procedures in Section XXIII.

D. In order to administer and enforce state laws, and the provisions of the Compact, the Department of Justice and the Department may investigate the activities of the officers, directors, agents and employees of the Tribe or the Authority, and contractors or gaming participants who may affect the operation or administration of Tribal gaming, and shall report suspected violations of state or federal laws, or tribal ordinances to the appropriate prosecution authorities, and suspected violations of this Compact to the Department. Pursuant to such investigation, the Department or the Wisconsin Attorney General may issue a subpoena, in accordance with state law, to compel the testimony of witnesses and the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the State reasonably deems relevant or material to the investigation. Section 885.12, Wis. Stats., shall apply to a failure to obey a subpoena under this subsection.

E. The Wisconsin Attorney General shall have jurisdiction to commence prosecutions relating to Class III gaming for violations of any applicable state civil or criminal law, or provision of this Compact, but only as against non-Indians.

F. Closure.

1. Issuance of Order for Closure. The Department shall have the authority to petition for a written Order of Closure of a Tribal gaming facility under this Compact whenever any of the following conditions exist:

   a. Repeated, material violations of the provisions of this Compact which have not been corrected;

   b. The continued operation of the Tribal gaming facility causes a significant threat to the integrity of Tribal gaming in the State of Wisconsin or the diversion of revenue from the Tribal gaming operations; or

   c. The continued operation of the Tribal gaming facility causes an immediate and present threat to the safety or health of casino employees or patrons or to the integrity of the gaming operation of the Tribal gaming facility.

2. Notice to the Tribe. Before serving a Petition for Order of Closure, the Department shall notify the Tribe of its determination that cause exists for the issuance of such an order. Such notice shall:

   a. State in detail the reasons for the issuance of such order, including a reference to any provision of the Compact being violated;

b. State measures that would remedy the alleged Compact violation or threat; and

c. Provide the Tribe a specified, reasonable time to take steps to remedy the alleged violation(s) or threat(s) specified in the notice. The closure order shall not be issued if the Tribe corrects the alleged violation(s) or threat(s) within the time provided in the notice. The Department shall offer to consult with the Tribe concerning the factual basis and reason for the proposed order.

3. Corrective Action. Prior to the expiration of the time for corrective action set out in the notice, the Department and the Tribe shall meet to determine whether the violations that resulted in the issuance of the notice have been corrected. If the Tribe has substantially complied with the corrective action set forth in the notice, the Department and the Tribe shall establish a schedule to achieve the remainder of the corrective actions. Substantial compliance means the threats identified pursuant to the notice have been alleviated.

4. Hearing. If the Department determines that the Tribe has not substantially complied with the corrective actions specified in the notice under par. 2, the Department may serve on the Tribe a Petition for Order of Closure. Such notice shall specify the conditions which support the issuance of the order, including any Sections of the Compact which the State alleges have been violated, and the deficiencies in the Tribe's corrective actions. The State shall, concurrently with service of such Petition, notify one of the Hearing Examiners (determined in accordance with par. 6 below) of the need for a contested case hearing. In the Petition, the State shall specify whether it seeks immediate closure of the facility. In the event such relief is requested, the Hearing Examiner shall schedule a hearing within two (2) business days of service of the Petition on the Tribe to determine when the hearing on the merits shall occur. Such hearing shall be governed by the provisions of ch. 227, Wis. Stats., regarding contested case proceedings, except that the provisions regarding notice of hearing shall not apply. In determining when the hearing on the merits shall occur, the Hearing Examiner shall consider (a) the potential risk and severity of harm from the alleged actions or inactions, (b) the complexity of the matters to be determined and (c) the need to afford the parties due process. After the Hearing Examiner rules on this request, the hearing on the merits shall then be conducted by the Hearing Examiner at such time, date and place as may be determined by the Hearing Examiner. Such hearing shall be governed by the provisions of ch. 227, Wis. Stats., regarding contested case proceedings.

5. Examiner's Decision. In conducting the proceedings set forth under par. 4, the Hearing Examiner is not limited to sustaining or striking down the Petition for Order of Closure, but may instead fashion such relief which is consistent with the findings of the Hearing Examiner, it being the agreement of the parties that sanctions hereunder shall be primarily remedial rather than punitive. Any decision of the Hearing Examiner shall be subject to judicial review pursuant to ch. 227, Wis. Stats.

6. Selection of Examiner. On or before the date of the opening of the Kenosha facility, the Tribe and the Department shall determine the names of one or more persons (the "panel") who shall be eligible to act as a Hearing Examiner under this Compact. The parties shall use their best efforts to mutually agree upon five (5) qualified individuals, or such lesser number as the parties may agree, as members of the panel. Periodically, but no more often than annually, any party may give notice to require the parties to meet to update the composition of panel. In the event agreement on composition of the panel cannot be reached, a party may invoke the rules and procedures of the American Arbitration Association whereby (a) the AAA administrator provides the Tribe and the Department with a list of proposed individuals who are generally familiar with the subject matter which would be involved in any potential dispute, (b) each side is provided a number of days to strike any unacceptable names, number the remaining names in order of preference, and return the list to the AAA, (c) the AAA administrator invites persons to serve on the panel from the names remaining on the list, in the designated order of mutual preference.

7. Tribal Compliance. Within two (2) hours of receipt of a Hearing Examiner's decision sustaining an Order for Closure, the Tribe shall discontinue the operation of Class III gaming at the Tribal gaming facility designated in the Order. The Tribal gaming facility shall remain closed until such time as the Order is lifted.

8. Permanent Closure. The Hearing Examiner shall have the authority to issue a permanent Order for Closure requiring permanent cessation of all Class III gaming activity at the Kenosha facility if there exist repeated, material violations of the provisions of this Compact which constitute a continuing pattern of non-compliance with the terms of the Compact and there have been at least two (2) temporary Order(s) for Closure which have been fully adjudicated during the term of the Compact.

XXII. INCORPORATION.

The Gaming Code of the Tribe, as it may be from time-to-time amended, is incorporated by reference into this Compact.

The State and Tribe further agree that the documents entitled *Memorandum of Understanding Regarding Technical Matters*, and *Memorandum of Understanding Regarding Government to Government Matters*, each executed contemporaneously with the March 2, 1999 Compact Amendment, are incorporated herein by reference, except that paragraph 3 of the *Memorandum of Understanding Regarding Technical Matters* is repealed and the amounts paid to the State pursuant to Section XXXIII. C. shall not be subject to the terms of the *Memorandum of Understanding Regarding Government to Government Matters*.

XXIII. DISPUTE RESOLUTION.

A. If either party believes that the other party has failed to comply with any requirement of this Compact, the following procedures shall apply: Either party may pursue any remedy which is otherwise available to that party to enforce or resolve disputes concerning the provisions of this Compact, and nothing in the Compact shall be interpreted to limit in any way the rights and remedies of the Tribe under Wisconsin law, including but not limited to ch. 227, Wis. Stats., the Wisconsin Administrative Procedure Act.

B. The above procedures may be initiated by the State to compel the Tribe to comply with the Tribe's Gaming Code as it may from time-to-time be amended. The above procedures may be initiated by the Tribe to compel the State to comply with ch. 945, Wis. Stats., as it may from time-to-time be amended.

C. Nothing in this Section shall be construed to preclude, limit or restrict the ability of the parties to pursue, by mutual agreement, alternative methods of dispute resolution, including but not limited to mediation or arbitration; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

XXIV. SOVEREIGN IMMUNITY, COMPACT ENFORCEMENT.

A. Except as expressly provided in Section XX., and herein, neither the State nor the Tribe waive their sovereign immunity, under either state or federal law, by entering into this Compact and no provision of this Compact is intended to constitute a waiver of State or Tribal sovereign immunity.

B. Except as provided in this Section XXIV, this Compact does not alter any waiver of either State or Tribal immunity which may have been effectuated by Congress in

passing the Act. This Compact in no way limits the application of 25 U.S.C. sec. 2710(d) (7) (A) [1991] which the parties believe provides an enforcement mechanism for violation of this Compact.

C. In addition to the enforcement mechanism under subsec. B., both the State and the Tribe agree that suit to enforce any provision of this Compact may be brought in federal court by either the State or the Tribe or any official or employee of either the State or the Tribe. Said suit may be brought for any violation of the terms of this Compact or violation of any applicable state or federal law. Relief in said suit shall be limited to prospective declaratory or injunctive relief. An allegation that an official or employee violated this Compact shall be deemed as an allegation that said official or employee is acting in excess of his/her authority for purposes of jurisdiction only. The State and the Tribe will bear their own costs of litigation for any action to enforce this Compact, including but not limited to, attorneys' fees.

D. The Authority expressly waives any and all sovereign immunity enjoyed by the Authority in connection with disputes or claims arising under this Compact. This includes suits to collect money due to the State pursuant to the terms of the Compact, including remedies against assets of the Authority; to obtain an order to specifically enforce the terms of any provision of the Compact; to impose or collect monies for violations pursuant to the terms of the Compact; or to obtain a declaratory judgment and/or enjoin any act or conduct in violation of the Compact. The Tribe and the Authority agree that the phrase "contract, claim or other obligation" as used in Section 7 of the Authority's charter includes all duties, responsibilities and obligations contained in this Compact, and any agreements incorporated by reference. The Authority consents to be sued in any court of competent jurisdiction, and specifically in any Circuit Court in Wisconsin where venue is proper, the State Court of Appeals and the State Supreme Court in connection with such disputes or claims, and the Authority shall not contest jurisdiction or venue of the above-referenced courts for any dispute or claim arising under this Compact. The Authority agrees to not invoke the doctrine of exhaustion of tribal or administrative remedies to defeat or delay such jurisdiction. The Authority further agrees it shall not invoke the doctrine of tribal sovereign immunity to evade its duties or obligations under this Compact. The Menominee Indian Tribe of Wisconsin guarantees any of its obligations under this Compact that are delegated to the Authority under the Authority's charter, and the Menominee Indian Tribe of Wisconsin consents to be sued on such guarantees to the same extent and subject to the same limitations as the Authority's consent to suit herein. In any suit for monetary damages, the parties agree that such damages shall be limited to undistributed or future net revenues or other assets of the Authority.

E. The parties agree that any violations of the applicable laws governing the pari-mutuel gaming and simulcasting portions of the operations at the Kenosha facility

shall be governed by Chapter 562 (rather than the remedies set forth in this Compact) as the same exists on December 1, 1999, but only to the extent the same is made applicable to the regulation of pari-mutuel gaming pursuant to Section XXXVII of this Compact.

F. The parties agree that the State's interest in obtaining compliance at the Kenosha facility with certain provisions of the Compact (Sections IV, V, X, XIV, XX, XXI, and XXXIII), and other provisions set out below, are not adequately protected by remedies limited to declaratory or injunctive relief. The parties agree that such other provisions are as follows:

1. Failure to follow the approved minimum internal control standards, or other practices, which cause a material diversion of revenue, a material reduction in the ability to safeguard assets, or a material decrease in the ability to preserve reliable records, accounts and reports of transactions.

2. Violation of the terms of the Compact, or other practices, which alter, or cause a material risk of altering, the outcome of any Class III game or the payout of any Class III game.

3. Violation of the terms of the Compact which pose a material threat to the integrity of the operation of Class III games and wagers.

In the event the State believes a violation has occurred at the Kenosha facility and the State only seeks payment under this subsec. F, the State shall follow the contested case procedures set forth in ch. 227, Wis. Stats., with the Hearing Examiner selected in accordance with Section XXI.F.6. In the event the State seeks both payment under this subsec. F and closure under Section XXI, the State shall follow the procedures set forth in Section XXI. Any decision of the Hearing Examiner shall be subject to judicial review pursuant to Ch. 227, Wis. Stats.

The parties agree that upon a final determination that a violation of any of the foregoing has occurred at the Kenosha facility, the Tribe shall pay to the State a sum of up to $50,000 per violation, in addition to any other relief which may be obtained by the State; provided, however, that if such final determination finds that there occurred, over time, related violations which evince either an intent to violate the relevant provisions of the Compact, or an unreasonable disregard for the relevant provisions of the Compact, the maximum payment shall be increased to $200,000. Any such payment rising out of violations at the Kenosha facility shall be limited to undistributed or future net revenues or other assets of the Authority.

G. These enforcement provisions are an essential part of this Compact, and if they are found to violate the sovereign immunity of either the State or the Tribe or should the

courts otherwise determine they lack jurisdiction to enforce the Compact, the parties will immediately resume negotiations to create a new enforcement mechanism.

H. In the event there has been a final determination by a court of competent jurisdiction that the State may not obtain a remedy specified in subsec. D. above because (1) either the Tribe or the Authority has asserted a position which is contrary to subsec. D. or (2) such court has found that the waiver of sovereign immunity contained in subsection D. was *ultra vires* or otherwise unenforceable against the Tribe or Authority, the State and the Tribe shall meet to negotiate alternative remedies acceptable to the Tribe and the State. In the event agreement is not reached within ninety (90) days, either the State or the Tribe may, within thirty (30) days, provide the other with written notice of termination of this Compact as to the Kenosha facility. The Compact shall then expire as to the Kenosha facility ninety (90) days after the date on which the written notice of termination is given to the other party and the Tribe shall cease Class III gaming at the Kenosha facility.

I. The Tribe may not alter the charter of Authority, a true and correct copy of which is attached hereto as Exhibit C, without the prior written consent of the State (such consent to not be unreasonably withheld). In the event that the Tribe alters, without the consent of the State, the charter of the Authority in a manner which prevents the State from enforcing or obtaining compliance with any terms of the Compact, and a court or other Tribunal determines that the State may not obtain a remedy specified in subsec. D. above due to the alteration of the charter of the Authority, which determination is binding on the State, whether or not such judgment has been appealed or is otherwise subject to further review, the State and the Tribe shall meet to negotiate alternative remedies acceptable to the Tribe and the State. In the event agreement is not reached within ninety (90) days, either the State or the Tribe may, within thirty (30) days, provide the other with written notice of termination of the Compact Amendments of 2000 as contained herein. The Compact Amendments of 2000 as contained herein shall then expire ninety (90) days after the date on which the written notice of termination is given to the other party and the Tribe shall cease Class III gaming at the Kenosha facility.

XXV. REIMBURSEMENT OF STATE COSTS.

A. The Tribe shall pay to the State, as reimbursement for State costs of regulation under this Compact, an annual amount for each State fiscal year computed as follows: the share of $350,000 determined by multiplying that amount by a fraction whose denominator is the sum of the gross annual Class III gaming handle of those tribes for the previous fiscal year, and whose numerator is the Tribe's gross annual Class III gaming handle for that same fiscal year. Payments shall be made within 30 days after the Tribe receives a statement from the State setting forth the amount to be paid by the Tribe under this Section.

B. Payments under subsec. A. shall be made payable to the State of Wisconsin and sent to:

Secretary
Department of Administration
State of Wisconsin
P.O. Box 7864
Madison, Wisconsin 53707-7864

C. The Tribe shall also directly reimburse the Department of Justice and the Department for their actual and necessary costs of providing services and assistance at the request of the Tribe.

D. For purposes of this Section, "gross gaming handle" means total amount wagered.

XXVI (1). DURATION OF COMPACT WITH RESPECT TO ON-RESERVATION GAMING.

A. With respect to on-reservation gaming facility(ies), this Compact shall expire on September 3, 2004.

B. The duration of this Compact with respect to on-reservation gaming shall thereafter be automatically extended for terms of five years, unless either party serves written notice of non-renewal on the other party not less than one hundred eighty days prior to the expiration of the term specified in subsec. A. or any extension thereof.

C. In the event written notice of non-renewal is given by either party as set forth in this Section, the Tribe shall cease all Class III on-reservation gaming under this Compact upon such expiration date or upon the date the procedures in subsec. E. are concluded and a successor compact, if any, is in effect.

D. The Tribe may operate Class III on-reservation gaming only while this Compact, or any extension thereof under this Section, is in effect with respect to on-reservation gaming.

E. In the event that written notice of non-renewal is given by one of the parties under subsec. B., above, the Tribe may, pursuant to the procedures of the Act, request the State to enter into negotiations for a successor compact governing the conduct of Class III on-reservation gaming activities to become effective following the expiration of this Compact with respect to on-reservation gaming. Thereafter the State shall negotiate with the Tribe in good faith concerning the terms of a successor compact (see sec. 11 (d) (3) (A) of the Act). If such a successor compact is not concluded by the expiration date specified in this Section of the Compact, or any extension thereof under subsec. B., the Tribe shall do one of the following:

1. Immediately cease all Class III on-reservation gaming upon the expiration date specified in this Section of the Compact, or any extension thereof under subsec. B.; or

2. Commence action in the United States District Court pursuant to Section 11 (d) (7) of the Act, in which event this Compact shall remain in effect with respect to on-reservation gaming until the procedures set forth in Section 11 (d) (7) of the Act are exhausted.

F. The parties agree that the duration of the Compact with respect to on-reservation gaming shall have no impact on the duration of the Compact with respect to the Kenosha facility, and that the renegotiation or extension of this Compact with respect to on-reservation gaming shall not be influenced or otherwise impacted by the operation of the Kenosha facility.

XXVI (2). DURATION OF COMPACT WITH RESPECT TO KENOSHA FACILITY.

A. This Compact shall be in effect with respect to the Kenosha facility for a term of not to exceed five years from the date Class III gaming is first offered by the Tribe at the Kenosha facility, or until December 31, 2006, whichever is earlier. Upon presentation by the Tribe of a plan of financing prepared by the Authority's underwriters, which evidences all then-existing financing commitments together with the projected terms of debt to be placed (and such plan provides for at least $200 million in external financing for the Kenosha facility), the Tribe may request that the Department extend the duration of the Compact with respect to gaming at the Kenosha facility to the date contemplated by the financing documents. The Department shall review the proposed financing for the Kenosha facility and shall extend the duration of the Compact with respect to gaming at the Kenosha facility if the Department agrees with the plan of financing.

B. The duration of this Compact with respect to gaming at the Kenosha facility shall thereafter be automatically extended for terms of five years, unless either party serves written notice of non-renewal on the other party not less than one hundred eighty days prior to the expiration of the term specified in subsec. A. or any extension thereof.

C. In the event written notice of non-renewal is given by either party as set forth in this Section, the Tribe shall cease all Class III gaming at the Kenosha facility under this Compact upon such expiration date or upon the date the procedures in subsec. E. are concluded and a successor compact, if any, is in effect.

D. The Tribe may operate Class III gaming at the Kenosha facility only while this Compact, or any extension thereof under this Section, is in effect with respect to gaming at the Kenosha facility.

E. In the event that written notice of non-renewal is given by one of the parties under subsec. B., above, the Tribe may, pursuant to the procedures of the Act, request the State to enter into negotiations for a successor compact governing the conduct of Class III gaming activities at the Kenosha facility to become effective following the expiration of this Compact with respect to gaming at the Kenosha facility. Thereafter the State shall negotiate with the Tribe in good faith concerning the terms of a successor compact (see sec. 11 (d) (3) (A) of the Act). If such a successor compact is not concluded by the expiration date specified in this Section of the Compact, or any extension thereof under subsec. B., the Tribe shall do one of the following:

1. Immediately cease all Class III gaming at the Kenosha facility upon the expiration date specified in this Section of the Compact, or any extension thereof under subsec. B.; or

2. Commence action in the United States District Court pursuant to Section 11 (d) (7) of the Act, in which event this Compact shall remain in effect with respect to on-reservation gaming until the procedures set forth in Section 11 (d) (7) of the Act are exhausted.

XXVII. TRIBAL GAMING ORDINANCES AND STATE LAW.

To the extent that State law or Tribal ordinances, or any amendments thereto, are inconsistent with any provision of this Compact, this Compact shall control.

XXVIII. RIGHTS UNDER THE ACT.

Nothing in this Compact shall be construed to limit the rights or remedies available to the parties under the Act, except as specifically provided herein.

XXIX. NOTICES.

All notices required or authorized to be served shall be served by first class mail at the following addresses:

Tribal Chairman
Menominee Indian Tribe of Wisconsin
P.O. Box 397
Keshena, Wisconsin 54135

Governor
115 East, State Capitol
Post Office Box 7863
Madison, Wisconsin 53707

Chairman of the Board
Menominee Kenosha Gaming Authority
P.O. Box 397
Keshena, Wisconsin 54135

XXX. AGREEMENT DATE.

This Compact shall become binding on the Tribe, the Authority, and the State upon signature by the Chairman of the Menominee Indian Tribe of Wisconsin, by the Chairman of the Board of the Menominee Kenosha Gaming Authority, and by the Governor of the State of Wisconsin. This Compact shall cease to be binding upon the parties in the event it is disapproved by the Secretary of the United States Department of the Interior. Should this Compact cease to be binding due to secretarial disapproval, then it is the intent of the parties and the parties hereby agree, that the Tribal/State Compact entered into on June 3, 1992, as amended through November, 1999 (i.e., the Compact as it existed immediately prior to the most recent amendments, such amendments being referred to herein as the "Compact Amendments of 2000") shall continue in force and effect.

XXXI. AMENDMENT.

This Compact shall not be modified, amended or otherwise altered without the prior written agreement of both the State and the Tribe.

XXXII. PARTIES' INTENT AND MATERIAL CONSIDERATIONS OF THIS COMPACT.

A. In consideration of:

1. The Tribe's desires to be able to offer Class III games that are economically viable and provide substantial revenues to support tribal self-sufficiency and economic development, and to have the confidence that such games may be offered for such period of time that the Tribe can develop its gaming enterprise, recover its capital investments, and receive a reasonable return, and

2. The State's desire to limit the types of "casino-type" games that may be offered within this state to a select number in order not to have pervasive broad-scale "casino-type" gambling within the state.

The parties acknowledge that the mutual compromises with respect to the types of games the Tribe is authorized to operate during the term of this Compact and with respect to the duration of this Compact were significant material considerations in reaching agreement and are the essence of this Compact.

B. The parties do hereby acknowledge that this Compact represents a free, voluntary and amicable agreement by the parties as the result of the unlimited right and

opportunity of the parties to make any and all demands with respect to their rights and obligations under the Act, and that this Compact constitutes the whole of the parties' agreement.

XXXIII. PAYMENT TO THE STATE.

A. On-Reservation Gaming. The Tribe shall make an annual payment to the State for each one-year period beginning September 3, 1999 through September 3, 2004, in the amount of $747,371. Each twelve (12) month period beginning September 3, 2000, and ending on September 3, 2004, shall be considered a base year for purposes of this Section. The Tribe shall make annual payments in the amount of $747,371 for each base year of the Compact extension, which payments shall be supplemented by the following amount:

1. For every percentage increase in the net win at the Tribe's Class III on-reservation gaming facilities, the Tribe shall pay to the State an additional $7,473. Net win shall mean the total amount wagered less winnings paid.

2. The increases in net win shall be measured by comparing the net win at the Tribe's Class III on-reservation gaming facilities in the base year for which the payment applies, with the net win at the Tribe's Class III on-reservation gaming facilities in the immediately preceding base year. The amount shall be reported to the State by the Tribe within sixty (60) days of the close of the preceding year and shall be subject to verification by the State.

B. Method of Payment. The Tribe shall make the first payment required by subsec. A. on or before September 3, 2000, and each subsequent payment on September 3, 2001, September 3, 2002, September 3, 2003 and September 3, 2004 respectively.

C. In addition to the amounts paid under subsec. A., the Authority shall also pay the following amounts to the entity selected pursuant to subsec. I:

1. For the first year the Kenosha facility is in operation the Authority shall pay an amount equal to 7% of the net win generated at the Kenosha facility.

2. For the second year of operation, the Authority shall pay 7% of the net win generated at the Kenosha facility, provided however that if the total net win for the second year reaches or exceeds $315,000,000, the Authority shall pay an amount equal to 7.3% of the net win for that year.

3. For the third year of operation, the Authority shall pay 7% of the net win generated at the Kenosha facility, provided however that if the total net win for the third year reaches or exceeds $315,000,000, the Authority shall pay an amount equal to 7.3% of the net win for that year.

4. For the fourth year of operation, the Authority shall pay 7% of the net win of the Kenosha facility, provided however that if the total net win for the fourth year reaches or exceeds $356,000,000, the Authority shall pay an amount equal to 7.5% of the net win for that year.

5. For the fifth year of operation, the Authority shall pay 7% of the net win of the Kenosha facility, provided however that if the total net win for the fifth year reaches or exceeds $360,000,000, the Authority shall pay an amount equal to 7.5% of the net win for that year.

6. In the event the Authority operates more than 3,500 electronic games of chance, each of the percentages under 1.-5. above shall increase by .5% for those periods of time during the year when the number of games operated by the Authority is in excess of 3,500.

7. In the event that the duration of the Compact is extended beyond five years, the Authority shall pay an amount equal to 7.5% of the net win generated at the Kenosha facility for each year the duration is extended beyond five years.

8. Minimum Payment. There shall be no minimum payment for the first year of operation. The Authority agrees that, in the event the payments under paragraph 1-7 of this subsection C. for each two-year period thereafter are less than $40 million, the Authority shall pay an amount equal to such deficiency within thirty (30) days after the completion of the financial audit under Section XII for the fiscal year. The computation of the minimum payment for any short period ending on the termination date of this Compact shall be prorated on a daily basis.

9. The Authority shall make its payments under this subsection as follows:

   a. The Authority agrees that it will retain only such cash at the Kenosha facility as is commercially reasonable and shall deposit all other gaming receipts (net of prizes) in one separate and segregated account at a bank or other financial institution (the "Gaming Account").

   b. The Authority shall provide irrevocable payment instructions for the Gaming Account, authorizing payment to the entity designated under subsec. I on a daily basis an amount based on the percentages set forth in 1-7. In addition, if for some reason one or more daily payments is not made, the entity designated under subsec. I shall have the right to such of the amount deposited as will make the entity designated under subsec. I whole with respect to the missed

daily payments. The Authority shall be entitled to withdraw all remaining monies from the Gaming Account after the State has been so paid. The cost of such sweep shall be borne by the entity designated under subsec. I.

c. Any balance due shall be paid by the Authority within thirty (30) days after the completion of the financial audit under Section XII for the fiscal year.

d. Payments made pursuant to this subsection shall be by electronic transfer of funds. After commencement of Class III gaming at the Kenosha facility, the Department and the Tribe shall establish further procedures regarding how payments are made under this subsection.

10. For purposes of this Section, net win shall mean the total amount wagered on all Class III games minus prizes paid to the public for those games. Year of operation shall mean a 365-366 day year, with the first year beginning the first day on which Class III gaming is offered to the public at the Kenosha facility, and each subsequent year beginning on the anniversary date of such event. The Authority's fiscal year shall coincide with such year(s) of operation.

11. Payments to the entity designated under subsec. I shall be made before, and shall take precedence over, payment of any other obligation of the Authority except for payment of employees of the Authority at the Kenosha facility.

D. In the event a change in State law is enacted to permit the operation of electronic games of chance, or other Class III games, as defined in and authorized by this Compact, by any person other than a federally recognized Tribe under the provisions of the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et. seq., or the State Lottery as authorized by ch. 565 Wis. Stats., the Tribe shall be relieved of its obligations to pay these amounts. If a subsequent agreement regarding Class III gaming substantially and adversely affects the Tribe's Class III gaming revenues, the State and the Tribe shall meet to discuss a reduction of the amount required pursuant to Section XXXIII.

E. In the event that a natural or man-made disaster renders impossible the operation of fifty (50) percent or more of the electronic games of chance operated by the Tribe under this Compact at a gaming facility for a period of fourteen (14) consecutive days or more, the applicable payment required under subsec. A. or subsec. C.8. for the year in which the disaster occurs shall be reduced by a percentage equal to the percentage decrease in the net win (total amount wagered less winnings paid) for the fiscal year in which the disaster occurred compared with the net win for the previous fiscal year, and the State and Tribe shall meet to discuss additional assistance.

F. In the event state or federal law prevents the Tribe from offering any type of Class III game permitted under this Compact at the date of execution, Tribe may suspend payments under this Section and State and Tribe shall meet to discuss the amount of payments due under this Section after such date.

G. All payments made by the Tribe pursuant to any other Section of this Compact shall be promptly credited against the amounts otherwise due under subsec. C.

H. The parties may modify this obligation to pay pursuant to a subsequent agreement.

I. The Tribe shall pay the amounts set forth in subsec. C to an entity designated pursuant to the following procedures:

1. Designation.

a. The Governor may elect to designate a non-profit entity which is organized and operates for a public purpose to receive, for the benefit of the State, the monies paid pursuant to subsec. C.

b. Within 90 days of receipt by the Tribe of an election by the Governor designating an entity to receive funds pursuant to this Compact, the Tribe and Authority shall enter into a binding agreement with the entity designated to receive monies under this Compact, and the State. The agreement shall contain the following terms: the obligation to make payments to the entity designated to receive monies under this Compact; a guarantee of this obligation by the Tribe; a waiver of immunity by the Authority and Tribe for those purposes; and any other terms mutually agreeable to all parties. Such guarantee and waiver shall be in the same form as stated in this Compact. In the event the agreement is not entered into as required by this subsection, the Governor may provide a notice to the Tribe that it is not in compliance with this subsection. Within seven days of receipt of this notice, the Tribe shall cease all Class III gaming at the Kenosha facility until it has complied with this provision.

2. In the event the written notice of election is not served as provided herein, or the Governor serves a notice on the Tribe of his decision not to make such an election, the Tribe shall make the required payments to the State.

XXXIV. ADDITIONAL BENEFITS TO TRIBE.

Should the State and any other compacting Tribe within Wisconsin amend a current gaming compact or adopt a new gaming compact with terms that are more favorable to the compacting Tribe or to the State than are the terms of this Compact, upon request by Tribe,

the parties shall meet to negotiate the incorporation of substantially similar provisions into the Compact and, if applicable and agreeable to the parties, substantially similar provisions shall be incorporated into the Compact.

XXXV. NOTICE OF TERMINATION.

In the first ninety (90) days after any of the following Listed Events occur, the State and the Tribe shall meet to negotiate new provisions acceptable to both parties. In the event that a mutually acceptable agreement cannot be reached, the State or the Tribe may, within one-hundred-eighty (180) days of the effective date of one of the following Listed Events, provide the other with written notice of termination of the Compact Amendments of 2000 as contained herein. If such notice is given, the Compact Amendments of 2000 as contained herein shall then expire ninety (90) days after the date on which the written notice of termination is given to the other party, the Tribe shall cease Class III gaming at the Kenosha facility, and the Compact as entered into by the Tribe and State on June 3, 19992, as amended through November 30, 1999, shall be revived and continue to be in full force and effect. Because the powers, duties and responsibilities assigned to the Tribe and the State by the execution of the Compact Amendments of 2000 will be a necessary and material consideration supporting any decision by the Governor to concur in the determination of the Secretary pursuant to Section 20 of the Act, as required by 25 U.S.C. 2719(b)(1)(a), that the Tribe may engage in off-reservation gaming, the Tribe agrees not to resume Class III gaming at the Kenosha facility until Compact Amendments acceptable to the State are executed. The Listed Events are:

1. The United States Department of the Interior disapproves, in whole or in part, these Compact Amendments of 2000 as contained herein, or otherwise causes any or all of these Compact Amendments of 2000 as contained herein to be without force or effect, and this action materially and substantially affects the obligations of, or benefits to, any party. Benefits to the State include, but are not limited to, ~~the ability to~~ regulate Class III gaming and enforce the provisions regarding Class III gaming and operation of the facilities authorized herein;

2. A court of competent jurisdiction finds any part of these Compact Amendments of 2000 as contained herein to be either null and void, or nullifies these Compact Amendments of 2000 as contained herein in their entirety, or otherwise causes any or all of these Compact Amendments of 2000 as contained herein to be without force and effect, and this action materially and substantially affects the obligations of, or benefits to, any party. Benefits to the State include, but are not limited to, the ability to regulate Class III gaming and enforce the provisions regarding Class III gaming and operation of the facilities authorized herein;

3. The Department of the Interior, Congress, or a court of competent jurisdiction materially alters these Compact Amendments of 2000 as contained herein such that either the State or the Tribe or both do not receive the full consideration set forth therein, or otherwise causes any or all of the Compact Amendments of 2000 as contained herein to be without force or effect and this action materially and substantially affects the obligations of, or benefits to, any party. Benefits to the State include, but are not limited to, the ability to regulate Class III gaming and enforce the provisions regarding Class III gaming and operation of the facilities authorized herein;

XXXVI. AGREEMENTS WITH LOCAL GOVERNMENTS.

The Tribe shall enter into written agreements with all units of local governments providing services to a Class III gaming facility of the Tribe, to reimburse those units of local governments for such services.

XXXVII. PARI-MUTUEL ON-TRACK WAGERING AND SIMULCAST WAGERING.

A. Unless otherwise mutually agreed by the State and the Tribe, the conduct of pari-mutuel on-track wagering and simulcast wagering at the racetrack portion of the Kenosha facility shall be subject to the regulatory jurisdiction of the State conducted in accordance with Chapter 562, Wis. Stats., as the same exists on December 1, 1999; the rules and regulations contained in Chapters WGC 1 through 24 of the Wisconsin Administrative Code as the same exists on December 1, 1999; and the requirements contained in Exhibit D (with the State's regulatory jurisdiction to be exclusive, to the fullest extent permitted by law), except that:

1. The State agrees that the Authority shall be approved as the holder of the license required under sec. 562.05(1), Wis. Stats., for the Kenosha, Wisconsin racetrack effective as of the later of (a) the date of purchase of the racetrack or (b) the date the Authority obtains financing in excess of $100 million.

2. Section 562.05(1m), sec. 562.05(3w)(a), sec. 562.052, sec. 562.057(4m)(b), sec. 562.06, sec. 562.065(c) and (d), and sec. 562.08, Wis. Stats., and any related rules shall not apply to the Tribe.

3. The State and the Tribe agree that to the extent Chapter 562, Wis. Stats., would otherwise require the Tribe to pay taxes and fees, Tribe shall be exempt from such taxes and fees.

4. The Authority shall offer a minimum of 400 race performances per year. A race performance shall consist of no fewer than 12 individual races. At the request of the Authority, the Department may modify the minimum number of race performances or the definition of the number of races which constitute a race performance. The Authority shall submit a proposed schedule of performances at least annually at a time specified by the Department.

5. The terms of Exhibit D and the rules and regulations of the Department referenced in subsec. A. applicable to the conduct of pari-mutuel on-track wagering and simulcast wagering at the racetrack portion of the Kenosha facility may be modified by the mutual written agreement of the Department and the Authority.

B. It shall not constitute a violation of Section IV.C. of this Compact for the Authority to engage in simulcasting in accordance with the applicable provisions of sec. 562.057, Wis. Stats., as the same are constituted on December 1, 1999.

C. In the event the State, after the date on which Section XXXVII. of this Compact becomes binding on the parties, amends Chapter 562, Wis. Stats., or any of the above-referenced rules, or otherwise alters the regulation of pari-mutuel on-track wagering or simulcast wagering in Wisconsin, Tribe has the right to notify the State which, if any, such changes will apply to the Tribe. The Tribe's consent to the application of such changes to the Tribe shall not be unreasonably withheld.

XXXVIII. GAMING - COMPETITIVE MARKET AREA MENOMINEE FACILITY.

A. Definitions.

1. "CMA Menominee Facility" means any Menominee Facility located within a Competitive Market Area.

2. "Competitive Facility" means a facility outside of Wisconsin where Class III gaming is offered.

3. "Competitive Market Area" means the geographical area located within a 60-mile radius of a Menominee Facility, but only if such geographical area possessed the following characteristics at any time after December 31, 1998:

a. An adult population in excess of 3,000,000;

b. At least 50% of such adult population is domiciled outside of the State of Wisconsin; and

c. A Competitive Facility (one or more).

4. "Menominee Facility" means a location where games authorized under this Compact are conducted.

B. Competitive Class III Games. In the event a Competitive Facility offers or operates any Class III game other than a game presently permitted under this Compact, the Authority may request that the Department approve the conduct of such game(s) by the Authority and the Department shall negotiate whether to approve such games and, if so, the regulatory requirements which shall apply to such games.

XXXIX. SPECIAL PROVISIONS FOR OFF-RESERVATION FACILITY.

A. Restrictions on Acquisition of Tribal Trust Lands. In the event the Tribe opens a gaming facility on off-reservation land in Kenosha, Wisconsin, the Tribe will close one of its existing on-reservation gaming facilities (Menominee Crystal Palace), as required by Sections XV.H of this Compact. The Tribe agrees that in the event it does acquire such off-reservation trust lands for gaming, it will not seek to acquire any additional trust lands located in the county in which such trust lands are located other than the lands acquired for gaming.

B. Conduct of Gaming by Authority.

1. The Kenosha gaming facility shall be operated through the Authority. A copy of the Authority's charter is attached as Exhibit C.

2. The Tribe and the Authority shall enact no law nor shall any Tribal or Authority official or employee act in any manner to impair the obligations of contracts entered into by the Authority with local governments or other parties in furtherance of the financing, development, construction, or operation of the Kenosha gaming facility (the "Contracts") without the written consent of the non-Tribal parties to such contracts.

3. While any such Contract is in effect, the Tribe shall not change or repeal the charter of the Authority without the written consent of the State, which consent shall not be unreasonably withheld, and of all of the parties to the Contracts. In order to qualify as one of the Contracts, a contract must recite that it is entered into in reliance on either this Section or Section 10 of the Authority's charter. This Compact is entered into in reliance upon said charter.

C. Concurrence. The execution by the Governor of the Compact Amendments of 2000 as contained herein, governing Class III gaming at the Kenosha facility, does not constitute concurrence by the Governor, as required by Section 20 of the IGRA, in any decision which may be made by the Secretary of the Interior that taking the land into trust for gaming purposes would be in the best interest of the Tribe and not detrimental to the surrounding community. The ability of the Governor to concur, after the execution of the Compact Amendments of 2000, in the Secretarial determination regarding detriment to the surrounding community is a material and substantial inducement, within the meaning of Section XXXV, to execution of the Compact Amendments of 2000 at the present time.

XL. GENERAL PROVISIONS.

A. Parties Not to Challenge Compact. It is the intent of the parties that this agreement be valid and enforceable. Each party agrees not to challenge the validity of this Compact or of any provision thereof.

B. Severability. It is understood and agreed by the parties that if any part, term, or provision of this Compact is held by the courts to be invalid, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Compact did not contain the particular part, term, or provision held to be invalid. However, this subsec. C. shall not preclude either the Tribe or the State from exercising its rights under Section XXXV.

XLI. TECHNICAL AMENDMENTS.

A. The Department may convene a State/Tribal Technical Work Group consisting of representatives of the Department and the Tribe to determine mutually agreeable policy on gaming-related issues that require clarification or resolution in this Compact. The State/Tribal Technical Work Group shall prepare a Memorandum of Understanding enumerating the mutually agreed-upon resolution or policy determination which, upon the signing by the Department and the Tribe, shall become mutually binding on the parties as an addendum to the Compact. The State/Tribal Technical Work Group is restricted to addressing and entering into Memorandums of Understanding regarding the operation of electronic games of chance, table games and issues pertaining to gaming-related contractors.

B. Either party to this may advise the other party in writing that it wishes to open one or more provisions of the Compact for technical amendment. All technical amendments to the Compact shall be in writing and signed by the Tribe and the Department. The terms and conditions of the provision of the Compact being amended shall remain in effect until modified or terminated. Each provision of the Compact shall stand separate and independent

of every other provision. All provisions not subject to technical amendment shall remain in force and effect. Technical amendments shall be limited to changes in technology of games authorized under this Compact.

IN WITNESS WHEREOF, The Menominee Indian Tribe of Wisconsin, the Menominee Kenosha Gaming Authority and the State of Wisconsin have hereunto set their hands and seals.

MENOMINEE INDIAN TRIBE OF WISCONSIN

By:_____
Apesanahkwat, Chairman

STATE OF WISCONSIN

By:_____
Tommy G. Thompson, Governor

MENOMINEE KENOSHA GAMING AUTHORITY

By:_____
Apesanahkwat, Chairman of the Board

THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

BY: KEVIN GOVER
ASSISTANT SECRETARY - INDIAN AFFAIRS

DATE: OCT 4 2000

MENOMINEE NATION
MENOMINEE TRIBAL LEGISLATURE
TRIBAL RESOLUTION NO. 00-41
APPROVAL OF TRIBAL/STATE COMPACT

WHEREAS, the Menominee Indian Tribe is a federally recognized Indian Tribe which acts through its governing body, the Tribal Legislature; and

WHEREAS, the Tribal Legislature has established a tribal business, the Menominee Kenosha Gaming Authority ("Authority") for the purpose of conducting the Tribe's proposed off-reservation Indian gaming in Kenosha, Wisconsin; and

WHEREAS, the Tribal Legislature and the Authority, acting for the Tribe, have entered into and completed negotiations for an amendment to the Tribal/State Compact entered into in 1992;

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Legislature hereby approves the amended Compact and authorizes Tribal Chairman Apesanahkwat to agree to any non-material language changes and execute the amended Compact, and forward the amended Compact to the appropriate authorities for approval.

CERTIFICATION

We, the undersigned, do hereby certify that the foregoing Tribal Resolution No. 00-41 entitled "Approval of Tribal/State Compact" was approved at a meeting of the Menominee Tribal Legislature on May 18, 2000, with a quorum present, by a vote of 5 for, 0 against, 0 absent, and 3 abstaining, and we further certify that this Tribal Resolution has not been rescinded or amended in any way.

Apesanahkwat, Chairman
MENOMINEE INDIAN TRIBE OF WISCONSIN

Lisa Waukau, Secretary
MENOMINEE INDIAN TRIBE OF WISCONSIN

DATE: May 18, 2000

Exhibit A

MENOMINEE NATION

MENOMINEE KENOSHA GAMING AUTHORITY

AUTHORITY RESOLUTION NO. 00-01

WHEREAS, the Menominee Indian Tribe, acting through its tribal governing body, the Menominee Tribal Legislature, a federally recognized Indian Tribe, and its tribally chartered business, the Menominee Kenosha Gaming Authority, have entered into negotiations with the Governor of Wisconsin for an amendment to its Tribal/State Gaming Compact; and

WHEREAS, negotiations have concluded to the satisfaction of all concerned parties; and

WHEREAS, the finalized Tribal/State Compact is attached hereto;

NOW, THEREFORE, BE IT RESOLVED, that the Menominee Kenosha Gaming Authority approves of the amended Tribal/State Gaming Compact and authorizes Authority Chairman Apesanahkwat to agree to non-material language changes and execute the amended Compact and forward it to the appropriate authorities for further approval as required under applicable law.

CERTIFICATION

We, the undersigned, do hereby certify that the foregoing Authority Resolution was approved at a meeting on May 18, 2000, of the Menominee Gaming Authority, with a quorum present, by a vote of 7 for, 0 against, 0 absent, and 2 abstaining; and we further certify that this Authority Resolution has not been rescinded or amended in any way.

Apesanahkwat, Chairman
MENOMINEE KENOSHA GAMING AUTHORITY

FOA

Lisa Waukau, Secretary
MENOMINEE KENOSHA GAMING AUTHORITY

DATE: May 18, 2000

Exhibit B

MENOMINEE NATION
MENOMINEE TRIBAL LEGISLATURE
AMENDMENT TO ORDINANCE NO. 99-11
MENOMINEE KENOSHA GAMING AUTHORITY CHARTER

FINAL APPROVAL.

BE IT ORDAINED BY THE LEGISLATURE OF THE MENOMINEE INDIAN TRIBE OF WISCONSIN:

Tribal Ordinance No. 99-11 is amended in its entirety by substitution of the Charter attached hereto and incorporated herein.

Effective Date: Immediately upon final approval.

CERTIFICATION

We, the undersigned, do hereby certify that the foregoing Amendment to Tribal Ordinance No. 99-11 was adopted for final approval at a regular meeting of the Tribal Legislature held on Thursday, September 16, 1999, with a quorum present, by a vote of 7 for, 0 against, 0 abstaining, and 1 absent; and we further certify that this amending ordinance has been posted pursuant to tribal law.

Apesanahkwat, Tribal Chairman
MENOMINEE TRIBAL LEGISLATURE

Lisa Waukau, Secretary
MENOMINEE TRIBAL LEGISLATURE

Date: September 16, 1999

Exhibit C

CHARTER OF THE
MENOMINEE KENOSHA GAMING AUTHORITY

1. **DEFINITIONS.** For the purposes of this Charter, the following terms shall have the following meanings:

   a. "Tribe" means the Menominee Indian Tribe of Wisconsin.

   b. "Authority" means the tribally chartered business established by this Charter entitled the Menominee Kenosha Gaming Authority.

   c. "Tribal Legislature" and "MTL" means the tribal governing body elected pursuant to the Menominee Constitution and By-Laws, Section 3, Article IV, and their successors.

   d. "Tribal member" means any person included on the official roll of the Menominee Tribe.

   e. "Gaming Operation" means the tribal gaming facility in Kenosha, Wisconsin established by the Menominee Tribal Legislature pursuant to the Indian Gaming Regulatory Act of 1988 and the Compact with the State of Wisconsin.

   f. "Governmental Powers" means those powers of the tribal government which it engages in as a federally recognized Indian Tribe.

   g. "Board of Directors" means the body named in this Chapter to provide for the management of the Gaming Operation defined above.

   h. "IGRA" means the Indian Gaming Regulatory Act of 1988, together with any amendments thereto and any regulations adopted thereunder.

   i. "Compact" means the Gaming Compact of 1992 between the Tribe and the State of Wisconsin, dated June 3, 1992, and any amendments thereto and/or successor compacts.

   j. "Gaming Control Code" means the Menominee Tribal Ordinance No. 93-30, as may be amended from time to time, or any superseding ordinance, including any ordinance enacted by the Authority under Section 3 of this Charter and approved under IGRA.

k. "Tribal Real Property" means land held in trust for the tribe by the Secretary of the Interior.

m. "Kenosha Property" means Tribal Real Property in Kenosha, Wisconsin.

2. **PURPOSES**. The purpose of the tribally chartered business, the Authority, is to develop, construct, conduct, and manage a gaming business in Kenosha, Wisconsin, as authorized by tribal law, the IGRA, and the Compact.

3. **BOARD OF DIRECTORS**. Pursuant to Article XIII, Menominee Constitution, this tribally chartered business shall have as its form of management a Board of Directors.

a. Members. The Board shall consist of nine (9) members, of whom six (6) shall be tribal legislators and three (3) shall be tribal members who do not serve on the Legislature. The directors shall be appointed by the Tribal Legislature and shall serve at the pleasure of the Legislature. Those directors who are members of the Legislature shall be appointed for a term coterminous with their term on the Legislature. Those directors who are not members of the Legislature shall be appointed for a term of three (3) years, provided that their terms shall be staggered. The three initial directors who are not legislators shall be appointed for terms of one, two, and three years. Any vacancy in the Board may be filled by the MTL. The Board shall

have no financial interest in, nor be employees of, the Gaming Operation as defined in this Charter.

b. Conflict of Interest Prohibited. Pursuant to Article XVII, Menominee Constitution, Board members shall not make or participate in making any decision which involves a substantial personal financial interest, other than those interests held in common by all tribal members.

c. Powers of Board. The Board shall possess powers listed in Article XIII, Menominee Constitution, and shall be governed by limitations listed therein. The Board is hereby delegated (1) all proprietary powers of the Tribe necessary to permit the Authority to discharge its obligations and to enforce its rights under this Charter, and (2) the power to enact, and from time to time amend, a gaming ordinance and implementing regulations to regulate the conduct of gaming on Kenosha Property, provided that such ordinance shall not conflict with any agreement referred to in Section 10 of this Charter, and provided further that such ordinance shall provide for a regulatory body separate from the Board. Until the Board enacts any such ordinance and it becomes effective, the Gaming Control Code shall apply to the Gaming Operation. The Board is also authorized to adopt such By-Laws as the Board deems reasonable and to conduct all other activities reasonably

necessary to implement the powers enumerated above or to further the business needs of the Authority.

d. Meetings. The Board shall meet a minimum of four (4) times a year. Additional meetings may be held at the written request of two (2) members of the Board. Places of meetings shall be set by the Board or by the members calling the meeting, provided, however, such meeting places shall be reasonably accessible for attendance by tribal members. Notwithstanding the forgoing, the Board may hold meetings by telephone conference when, as determined by the Chairman or by the members calling the meeting, it would be impractical to convene a meeting at which all directors or a quorum will be physically present. In addition, the Board may take action without a meeting if a consent in writing, setting out the action so taken, is signed by the number of the directors required by this Charter to take such action.

e. Quorum. The quorum for any meeting of the Board shall be five (5) members.

f. Notice of Meetings. Seventy-two (72) hours notice of meetings shall be given to Board members, verbal or written, unless circumstances as determined by the Chairman of the Board, shall indicate a shorter time.

g. Officers. The Tribal Legislature shall name the Chairman of the Board of Directors. The Board may name other officers

from its members, including a vice-chairman, a secretary, and a treasurer, and may define their duties.

h. Compensation. The Board may receive a reasonable compensation for service on the Board, provided, however, that such compensation shall not exceed the compensation provided for the Tribal Legislature.

Compensation under this provision may be revised on an annual basis.

i. Committees. The Board shall name an executive committee composed of three (3) members, provided that such a committee shall be limited to advisory or investigation activities only, and shall report back to the Board. The Chairman of the Board shall be Chairman of the executive committee.

j. Annual Business Meeting. The Board shall hold an annual business meeting on the second Saturday of April for the purpose of informing tribal members of the operation of the Authority for the past year. This meeting shall be held in Keshena, Wisconsin, at a time and place reasonably accessible to tribal members. In the event of failure, through oversight or other compelling reasons, to hold the annual business meeting as provided for herein, a subsequent meeting shall be held within a thirty (30) day period. The Board shall cause the

management of the Gaming Operation to be present at the Annual Business Meeting.

4. **INDEMNIFICATIION OF BOARD OF DIRECTORS.** Each present, former, and future member of the Board of Directors shall be entitled to be reimbursed and indemnified from assets of the Authority for all legal and other expenses reasonably incurred by him in connection with any claim, action, suit or proceeding of whatever nature in which he may be involved as a party or otherwise by reason of his having served as a member of the Board of Directors or by reason of any action alleged to have been taken or omitted by him as a member of the Board (including settlement amounts approved by a majority of the Board then in office other than those involved), provided that the Authority need reimburse such Board member's legal fees and expenses only if they are incurred after the Board has refused to provide legal representation to the member at the Authority's expense. No such reimbursement or indemnification shall be made in connection with any matter arising out of the negligence or misconduct of such Board members. Neither this Section nor any action or inaction by the Board under this Section shall create any liability against the Board or the Authority.

5. **ASSETS OF THE AUTHORITY.**

a. Initial Assets. The initial assets of the Authority shall consist of the personal property as described in the attached

Schedule of Property and incorporated by reference to this Charter. An initial asset of the Authority shall be all rights and obligations contained in the Management Agreement as amended between the Menominee Tribal legislature and NII-JII Management Company, Morgan Murphy, Jr., CEO, dated February 24, 1999. The Agreement is hereby transferred from the Menominee Tribal Legislature to the Authority, which shall assume the Tribe's rights and liabilities thereunder.

b. Additional Assets. All income to the Authority from whatever source, including all income from the Kenosha Gaming Operation, and any funds that are advanced, granted, given, or loaned to the Authority shall constitute additional assets of the Authority.

c. Tribal Property. No tribal real property (whatever owned by the Tribe, or in trust for the Tribe) or personal property other than the property described in subsections (a) and (b) of this section shall be an asset of the Authority for any purpose, provided that any leasehold to the Authority from the Tribe shall be considered an asset of the Authority.

6. FISCAL PRACTICES.

a. General Method of Operations. The Authority shall be operated in an efficient, business-like manner in accordance with this Charter. In addition, the Board of Directors shall: (i) establish

an accounting system that is in accordance with generally accepted accounting principles and is approved by an independent certified public accounting firm chosen by the MTL; (ii) cause an inventory of property to be taken as of the last day of business of each fiscal year; (iii) cause an annual audit of the Authority by an independent public accounting firm chosen by the MTL; (iv) prepare or have prepared an annual financial statement of the operations of the Authority; (v) prepare or have prepared monthly and annual financial statements; (vi) prepare a proposed budget, which shall constitute a plan of operation for the Authority, prior to the beginning of each fiscal year.

b. Distribution of Net Profits. The profits of the Authority realized from the Gaming Operation shall be disbursed by the Authority to the Tribe each month, except that (1) the Authority shall pay or retain such sums as it is required to pay or retain under contracts entered into with third parties, and (2) the Authority may retain such sums as are reasonable and necessary for incidental operating expenses for the establishment and maintenance of reserve accounts in such amounts for such purposes as the Board deems reasonably necessary and prudent.

7. SOVEREIGN IMMUNITY; PLEDGE OF ASSETS OF THE AUTHORITY. The Board may, by specific written agreement with any party, consent to suit against the Authority in its capacity as a tribal business, upon any contract, claim, or obligation arising out of its activities authorized by this Charter, and may waive the requirement of exhaustion of tribal remedies in such suits, provided that any such waiver of sovereign immunity shall limit the recovery of money damages to the undistributed or future net revenues or other assets of the Authority. Subject to the provisions of this Charter, the Authority is authorized to pledge, mortgage, or otherwise encumber its assets as security for debts; and to acquire, sell, lease, exchange, transfer, or assign personal property or interests therein. In no event shall any assets of the Tribe, including tribal forest land and other tribal land, be subject to any obligations of the Authority. The Tribe does not consent to be sued in its own name by means of this Charter.

8. AMENDMENT TO CHARTER. Subject to the requirements and limitations of Section 10, pursuant to the vested power of the Tribal Legislature set forth in the Menominee Constitution and By-Laws, the Tribal Legislature shall have the power to amend this Charter by ordinance.

9. TERMINATION OF CHARTER. Subject to the requirements and limitations of Section 10, pursuant to the vested power of the Tribal Legislature as set forth in the Menominee Constitution and By-Laws,

the Tribal Legislature may terminate this Charter; provided, however, that notice of any such action of termination, and the reasons for such action, shall be posted in accordance with applicable tribal law for a period of thirty (30) days, in addition to notice given to the Board of Directors. In the event this Charter is terminated as provided for above, the Board of Directors shall promptly relinquish all books and records of the Authority to the Tribal Legislature or its designee.

10. **SPECIAL PROVISIONS PROTECTING RIGHTS OF THIRD PARTIES.**

a. Amendments. During any period in which an indenture, compact or other contract entered into or binding on the Authority is outstanding or in effect which recites that it is entered into in reliance on this Section, the Tribal Legislature shall give notice to all parties to any such contract of intent to amend or repeal the Charter at least thirty (30) days prior to the amendment or repeal. In addition, as part of the Tribe's guarantee of any indenture, compact or other contract entered into by the Authority, amendment or repeal of this Charter shall require the written consent of all parties to such agreements. For the purpose of this provision, an indenture, compact or contract is outstanding or in effect only if it has received all of the regulatory approvals required by law.

b. Non-Impairment of Contracts. Notwithstanding any other provision of tribal law, the Tribe agrees through the issuance of

this Charter that it shall enact no law impairing the obligations of contracts entered into by the Authority in furtherance of the development, construction, operation, or promotion of gaming on the Kenosha Property. Neither the Legislature nor any committee, agency, or other official body, and no office or official of the Tribe shall, by exercise of the police power or otherwise, act to modify, amend, or any manner impair the obligations of contracts entered into by the Board without the written consent of the non-tribal parties to such contracts. Any such action or attempted action shall be voided ab initio.

c. Contract with the Tribe. This Charter constitutes a contract between the Tribe and the Authority, and it cannot be amended or repealed except according to its terms. Parties to contracts with the Authority which state that they are entered into in reliance on this Section 10 are deemed to be third-party beneficiaries of this Charter and the provisions of this section are deemed to be part of the Tribe's guarantee of such contract.

11. **MISCELLANEOUS PROVISIONS.**

a. Principal Place of Business. Initially, the principal office of the Authority shall be located in the Tribal Office Building, Menominee Reservation, in Keshena, Wisconsin. As soon as it is practical after the Kenosha Property is acquired by the Tribe, the principal office of the Authority shall be located on the

Kenosha Property, and the Board of Directors shall maintain offices there. The Authority may have such other offices as the Board of Directors may designate, and as the business of the Authority may require from time to time.

b. Agent for Service of Process. The Board of Directors shall designate an agent of the Authority for the purpose of accepting service of process. The business address of such agent shall be the principal office of the Authority. Until the Board of Directors designates such agent, the Tribal Secretary shall serve as such agent.

c. Seal. The Board of Directors may provide a seal of the Authority.

d. Duration. This Charter shall remain in effect in perpetuity unless revoked according to its terms.

Dated:

Chairman, Menominee Tribal Legislature

Secretary, Menominee Tribal Legislature

1. All necessary government approvals, authorizations, and permits necessary to the operation of the facility must be obtained and maintained in accordance with applicable standards for obtaining and maintaining such approvals, authorizations, or permits.

2. a. An on-site "Adopt-a-Greyhound" kennel shall continue to be maintained to house, care, train, and acclimate greyhounds available for adoption as pets. The Authority shall furnish, fund and staff such kennel in a manner consistent with the operation of the program as it existed on December 1, 1999.

b. The kennel compound shall continue to include an area to house an examination and therapy room for greyhounds, in a manner consistent with the operation as it existed on December 1, 1999.

c. Crates located in each kennel shall be maintained in a manner to ensure the health, welfare and safety of the greyhounds and be constructed of stainless steel or a comparable material. Each crate shall meet the following minimum size specifications: 3 feet wide, 4 feet deep and 3 feet high.

d. A sprint path adjacent to the kennel compound shall continue to be provided and maintained for year-round use and meet the following minimum size specifications: 30 feet wide by 400 feet long, divided by a

chain-link fence down the middle with gates on each end suitable for entering and exiting with greyhounds.

e. Each kennel shall be equipped with heat and smoke detectors connected to a main annunciator panel that are monitored twenty-four hours per day.

f. Kennel buildings shall be maintained in a manner to ensure the health, welfare and safety of both humans and greyhounds.

g. Each kennel shall be furnished with an individually controlled heating and air-conditioning system.

h. Each turnout pen shall be maintained in a manner to ensure the health, welfare and safety of the greyhounds, and the lower portion of the fence, at a minimum, shall be constructed of thirty-two inches of concrete block surmounted by chain-link fencing to a minimum height of six feet.

i. Crates in the lockout kennel shall be maintained in a manner to ensure the health, welfare and safety of the greyhounds, and continue to be at floor level and constructed of stainless steel or a comparable material meeting the following size specification: 3 feet wide, 4 feet deep and 4 feet high.

j. The kennel compound shall be maintained in a manner to ensure the health, welfare and safety of humans and greyhounds and protect the integrity of racing.

3. Separate office space for the Division of Gaming shall be provided and maintained by the Authority with, at a minimum, but not limited to, video monitors, office furniture, and telephone and computer hook-ups. The Authority shall be responsible for the installation and maintenance of the telephone equipment, including wiring, along with service fees for local usage. The offices at a minimum shall include a secretarial area, three offices, and a boardroom. All Division of Gaming offices shall be separate and distinct from the Authority's administrative offices. The offices shall be maintained at a level and in a manner consistent with the office as it existed on December 1, 1999. The Authority shall replace the above items if the Authority is unable to repair them to full functionality.

4. The Authority shall employ all appropriate soil erosion prevention methods and storm water run-off controls at the facility contained in the order published June 6, 1989, by the Wisconsin Racing Board, a predecessor agency to the Division of Gaming, and required by the Department of Natural Resources and the Department of Transportation.

5. If any construction at the facility reveals any hidden archeological resources, construction shall be halted and the State Historical Society shall be consulted for the purpose of evaluating the significance of the materials and developing a plan for recovery. A clause to this effect shall be incorporated into any and all relevant contracts into which the Authority enters, whether directly or as a third-party beneficiary.

6. The Authority shall take all necessary precautions during the operation of the racetrack to protect the wetland area located on or adjacent to the

facility operated by the Authority. No material shall be placed in the wetland area and no soil shall be graded or dredged from the wetland area without authorizing permits, so that the wetland area retains its existing characteristics, complement of native species and hydrologic and biological integrity. The provisions of this paragraph shall apply in the event that the Authority undertakes any construction at the site.

7. The Authority shall equally share with other licensees under sec. 562.05(1)(a) and (b), Wis. Stats., any expenses incurred by the Division of Gaming related to educating the public about pari-mutuel racing and the adopt-a-greyhound program.

8. The Authority shall be responsible for all costs associated with all autopsies performed on racing animals that die or are euthanized on the grounds of the racetrack compound or as deemed necessary by the Division of Gaming Veterinarian.

9. The Authority shall be responsible for all costs to obtain any supplies and medications for the Division of Gaming Veterinarian to provide medical treatment or examination to any injured or ill greyhound.

10. At a minimum, purses to greyhound and kennel owners must be 4.5% of the handle on all live and simulcast greyhound performances, 2.75% of the handle on all simulcast horse performances during times in which live greyhound racing occurs at the track, and 2% of the handle on all simulcast horse performances during times in which live greyhound racing does not occur.